7 Am. Jur. 2d Automobile Insurance Summary

American Jurisprudence, Second Edition | May 2021 Update

Automobile Insurance
Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; and Karen L. Schultz, J.D.

Correlation Table

Summary

Scope:
This article discusses automobile insurance, generally, and includes discussion of such matters as statutory requirements affecting automobile insurance; representations, warranties, and conditions with regard to such insurance; risks and harms covered and excepted; requirements as to notice and proof of loss or accident; rights to proceeds, apportionment and contribution among insurers; subrogation or reimbursement of insurers; and matters regarding automobile insurance actions, practice, and procedure. Also discussed are the various types of automobile insurance, including collision and liability insurance, as well as uninsured and underinsured motorist coverage, and no-fault and personal injury protection coverage.

Federal Aspects:
Federal statutes have been enacted with regard to the authority of certain public officials to obtain automobile insurance or obtain automobile insurance information.

Treated Elsewhere:
Admissibility of evidence of liability insurance under Federal Rules of Evidence, see Am. Jur. 2d, Evidence §§ 496 to 508

Attachment and garnishment of insurance policies and proceeds, see Am. Jur. 2d, Attachment and Garnishment §§ 131 to 141

Automatic stay under federal Bankruptcy Code: debtor's rights under insurance policy as protected by, generally, see Am. Jur. 2d, Bankruptcy § 1753; insurance coverage or lack thereof as cause for relief from, see Am. Jur. 2d, Bankruptcy §§ 1880, 1881

Automobiles and other vehicles used on highways and streets, and vehicular and pedestrian traffic on highways and streets, generally, see Am. Jur. 2d, Automobiles and Highway Traffic §§ 1 et seq.

Creditor's bill, interests under insurance policies as subject to, see Am. Jur. 2d, Creditors' Bills §§ 53, 54

Declaratory judgments regarding automobile liability insurance, generally, see Am. Jur. 2d, Declaratory Judgments §§ 137 to 140

Discovery of existence and contents of insurance agreements, generally, see Am. Jur. 2d, Depositions and Discovery § 38

Federal courts' diversity or alienage jurisdiction: direct actions against liability insurers, insurers' citizenship for purposes of, see Am. Jur. 2d, Federal Courts §§ 724, 731

Financial responsibility or security requirements prior to granting of license or certificate of registration, generally, see Am. Jur. 2d, Automobiles and Highway Traffic §§ 168 to 183

Insurance agents and brokers, generally, see Am. Jur. 2d, Insurance §§ 109 to 170

Insurance, general concepts, see Am. Jur. 2d, Insurance §§ 1 et seq.

Loss of consortium, recovery for, under automobile liability insurance policy, see Am. Jur. 2d, Husband and Wife § 200

Modification, reformation, and cancellation of insurance contracts, see Am. Jur. 2d, Insurance §§ 351 to 357, 397 to 459

Motor carriers: liability insurance, generally, see Am. Jur. 2d, Insurance §§ 692, 693; financial responsibility and security requirements, see Am. Jur. 2d, Automobiles and Highway Traffic §§ 175 to 183

Parent's liability insurance as affecting minor's right of action against parent for negligence, see Am. Jur. 2d, Parent and Child § 109

Regulation of insurance business, see Am. Jur. 2d, Insurance §§ 19 to 57

Renewal of insurance policy, see Am. Jur. 2d, Insurance §§ 378 to 391

Statute of Frauds, ability of insurance company to invoke protection of, see Am. Jur. 2d, Statute of Frauds § 468

Uninsured motorists, municipal corporations' or other political subdivision's liability for, see Am. Jur. 2d, Municipal, County, School, and State Tort Liability § 188

Venue change in federal court for convenience of parties and witnesses in actions involving insurance policies, see Am. Jur. 2d, Federal Courts § 1307

Workers' compensation: workers' compensation insurance, generally, see Am. Jur. 2d, Workers' Compensation §§ 446 to 459; automobile insurer as intervenor in workers' compensation case, see Am. Jur. 2d, Workers' Compensation § 509

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I. In General

A. Overview

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Research References

West's Key Number Digest

West's Key Number Digest, Insurance 1015, 1020, 1021, 1091(10) to 1091(12), 2013

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West's A.L.R. Digest, Insurance 1015, 1020, 1021, 1091(10) to 1091(12), 2013

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I. In General

A. Overview

§ 1. Governing law of automobile insurance policies; choice of law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1015, 1020, 1091(10) to 1091(12)

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Conflict of Laws in Determination of Coverage Under Automobile Liability Insurance Policy, 110 A.L.R.5th 465

A standard state automobile insurance policy must conform to the applicable statutes in effect at the time of contracting.[1] However, within the limits set by statutes in some states, the State Commissioner of Insurance decides what the terms of a standard policy will be, and the Commissioner's interpretation of the relevant statute, although not controlling, is entitled to deference.[2]

In order for insurance coverage to attach under an automobile insurance policy, steps required after the issuance and termination of a binder must be followed.[3] Generally, parties to an insurance contract may, by the terms of their contract, make it effective as of the time of the issuance, as of an earlier time, or as of a later time.[4] Furthermore, the validating event from which coverage under an insurance policy is effective may be found to be the payment of the first premium.[5]

Generally, the nature, validity, and interpretation of automobile insurance policies, like other contracts, are governed by the law of the place where the contract was made,[6] unless those provisions are contrary to the state's public policy, or the facts demonstrate another jurisdiction has the most significant relationship with the subject matter and the parties.[7] The fact that a

motor vehicle accident occurs in another state does not convert the validity of an automobile insurance policy from one of lex loci contractus into one of lex loci delicti, and thus, the substantive law of the state where the contract was made governs the validity of the policy's terms.[8] A jurisdiction's law will not apply to an automobile insurance policy if the only connection to that jurisdiction is that the interests insured under the policy were in the state at the time of the accident.[9] However, in some states, in determining choice of law issues related to an insurance contract, the principal location of the insured risk is given greater weight than any other single contact provided that the risk can be located in a particular state.[10] Unless some other state has a more significant relationship to the transaction and the parties, the law of the state which the parties understood to be the principal location of the insured risk during the term of an automobile insurance policy controls.[11] Also, where the parties to the contract manifest an intent to apply the laws of another jurisdiction by executing a choice of law provision, then that intent will be honored provided certain requirements are met.[12]

Although some states have enacted statutes requiring motor vehicle carriers of passengers for hire to furnish security in the form of a bond or policy of insurance for the benefit of persons injured by the carrier's operations,[13] there is authority for the view that bonds of this type are not insurance policies, so as to fall within the scope of automobile insurance.[14] However, statutes in some states have been enacted to the effect that a cash deposit, certificate of insurance, or surety bond filed with the State Department of Motor Vehicles to meet financial responsibility requirements are considered a policy of automobile insurance for the purposes of determining primary or excess coverage in the event of an automobile collision.[15] In such a jurisdiction, a car rental agreement which contains a provision indemnifying the renter from liability to third persons, up to a specified limit, resulting from an accident which occurs while the rented vehicle is in use constitutes insurance.[16] However, not all rental agreements will be considered automobile insurance policies.[17]

Footnotes

1 Citizens Property Ins. Corp. v. Trapeo, 136 So. 3d 670 (Fla. 2d DCA 2014); Ross v. Farmers Ins. Group of Companies, 82 Ohio St. 3d 281, 1998-Ohio-381, 695 N.E.2d 732 (1998).

2 Colby v. Metropolitan Property and Cas. Ins. Co., 420 Mass. 799, 652 N.E.2d 128 (1995).
As to the interpretation of compulsory insurance laws, generally, see § 23.
As to the construction of financial responsibility and no-fault laws, see §§ 27 to 31.
As to the construction of statutes pertaining to uninsured and underinsured motorist coverage, see §§ 34, 37.

3 Liberty Mut. Ins. Co. v. Maleski, 658 A.2d 463 (Pa. Commw. Ct. 1995).
As to automobile insurance binders, generally, see §§ 10 to 16.

4 As to date as affected by express agreement between parties, see Am. Jur. 2d, Insurance § 254.

5 As to date as affected by payment of first premium, see Am. Jur. 2d, Insurance § 258.

6 American Fire and Casualty Company v. Hegel, 847 F.3d 956 (8th Cir. 2017); McGill v. American Trucking and Transportation, Ins. Co., 77 F. Supp. 3d 1261 (N.D. Ga. 2015); Contreras v. American Family Mutual Insurance Company, 135 F. Supp. 3d 1208 (D. Nev. 2015).
With insurance contracts the principle of lex loci contractus mandates that the substantive law of the state where the last act to make a binding contract occurred, usually delivery of the policy, controls the interpretation of the contract. National Union Fire Ins. Co. of Pittsburgh, Pa. v. Njuguna, 15 F. Supp. 3d 637 (E.D. N.C. 2014).
As to the law of the place of the contract as governing contracts, generally, see Am. Jur. 2d, Conflict of Laws §§ 83 to 88.

7 Bernal v. Charter County Mut. Ins. Co., 2009 OK 28, 209 P.3d 309 (Okla. 2009).

8 Green v. United States Auto. Ass'n Auto and Property Ins. Co., 407 S.C. 520, 756 S.E.2d 897 (2014).

9 Fortune Ins. Co. v. Owens, 132 N.C. App. 489, 512 S.E.2d 487 (1999), aff'd, 351 N.C. 424, 526 S.E.2d 463 (2000).

10 Accurso v. Amco Ins. Co., 295 S.W.3d 548 (Mo. Ct. App. W.D. 2009).

As to conflict of laws regarding the right of an injured person to sue an automobile insurer directly, see § 559.
As to the law governing insurance contracts, generally, see Am. Jur. 2d, Insurance §§ 326 to 333.

11 Hoosier v. Interinsurance Exchange of the Automobile Club, 2014 Ark. 524, 451 S.W.3d 206 (2014).

12 Williams v. Smith, 465 S.W.3d 150 (Tenn. Ct. App. 2014), appeal denied, (Mar. 12, 2015).

13 As to financial responsibility or security requirements for motor carriers, see Am. Jur. 2d, Automobiles and Highway Traffic §§ 175 to 183.

14 Levitt v. Fireman's Fund Ins. Companies, 54 A.D.2d 923, 388 N.Y.S.2d 124 (2d Dep't 1976).

15 Grand Rent A Car Corp. v. 20th Century Ins. Co., 25 Cal. App. 4th 1242, 31 Cal. Rptr. 2d 88 (2d Dist. 1994).
As to financial responsibility laws with regard to insurance, generally, see §§ 21 to 44.
As to financial responsibility laws as a condition of granting drivers' licenses or registrations, see Am. Jur. 2d, Automobiles and Highway Traffic § 171.

16 Grand Rent A Car Corp. v. 20th Century Ins. Co., 25 Cal. App. 4th 1242, 31 Cal. Rptr. 2d 88 (2d Dist. 1994).

17 Ponds ex rel. Poole v. Hertz Corp., 37 Kan. App. 2d 882, 158 P.3d 369 (2007).

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I. In General

A. Overview

§ 2. Federal reporting requirements of automobile insurers

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West's Key Number Digest

West's Key Number Digest, Insurance 1021

Automobile insurers are subject to certain reporting requirements which may be required by the Secretary of Transportation of the United States.[1] In this regard, the Secretary may require an insurer, or a designated agent of the insurer, to make reports and provide the Secretary with information, including accident claim information by make, model, and model year of passenger motor vehicle about the kind and extent of physical damage and repair costs,[2] and personal injury.[3] Furthermore, when requested by the Secretary, an insurer must give to the Secretary: information about the extent to which the insurance premiums charged by the insurer are affected by damage susceptibility, crashworthiness, and the cost of repair and personal injury for each make and model of passenger motor vehicle;[4] and information available to the insurer about the effect of damage susceptibility, crashworthiness, and the cost of repair and personal injury for each make and model of passenger motor vehicle on the risk incurred by the insurer in insuring that make and model.[5] In distributing such information received, the Secretary may disclose identifying information about a person that may be an insured, a claimant, a passenger, an owner, a witness, or an individual involved in a motor vehicle accident, only with the consent of the person.[6]

Footnotes

1 49 U.S.C.A. § 32303.
2 49 U.S.C.A. § 32303(a)(1)(A).
3 49 U.S.C.A. § 32303(a)(1)(B).
4 49 U.S.C.A. § 32303(b)(1).
5 49 U.S.C.A. § 32303(b)(2).

6 49 U.S.C.A. § 32303(c).

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I. In General

A. Overview

§ 3. Purchase of insurance for certain federal officials or employees and motor vehicles

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West's Key Number Digest

West's Key Number Digest, Insurance 1021

The Secretary of State of the United States is authorized to obtain insurance on official motor vehicles operated by the Department of State in foreign countries, and pay the expenses incident thereto.[1] The Secretary of Agriculture is authorized to obtain insurance to cover the liability of any employee of the Department of Agriculture for damage to or loss of property or personal injury or death caused by the act or omission of any such employee while operating a motor vehicle belonging to the United States in a foreign country.[2]

Footnotes

1 22 U.S.C.A. § 2670(a).

2 7 U.S.C.A. § 2262.

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A. Overview

§ 4. Allowable classifications for determining eligibility or premium rates; gender, age, or driving record

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2013

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State regulation of insurer's nonacceptance, cancellation, or nonrenewal of, or increase in rate on, automobile insurance policy, based on driving record, 36 A.L.R.4th 1205

Propriety of automobile insurer's policy of refusing insurance, or requiring advanced rates, because of age, sex, residence, or handicap, 33 A.L.R.4th 523

In some jurisdictions, rates for automobile insurance premiums may be established on the basis of any classification submitted by any insurer or group of insurers, provided such classifications are found to be reasonable.[1] However, some states have curtailed the reasons why an automobile insurer may charge different rates to applicants by statute.[2] Thus, for example, classifications with respect to automobile insurance premium rates based on age and sex have been considered not unfair or unreasonable even though there is discrimination against good young drivers.[3] On the other hand, some jurisdictions deem the use of the age of prospective insureds as a basis for determining eligibility to receive automobile insurance as constituting an unfair trade practice, at least in the absence of a reasonable relationship between the individual's personal status and the extent of the risk or the coverage issued or to be issued.[4] Furthermore, an automobile insurer's policy of raising rates for drivers who reach age 65 violates a state statute proscribing such age discrimination, where the only factor that caused rate increases was age itself.[5]

The use of gender has been rejected as an acceptable classification basis under regulatory statutes providing that rates are not to be unfairly discriminatory.[6] Moreover, statutes have sometimes made it improper for an automobile insurer to consider age or gender when setting automobile insurance premiums.[7]

Statutory provisions for automobile insurance premium surcharges, in varying amounts, based on a system that rated insureds according to their driving records, have been found to be valid,[8] as long as there is substantial evidence to support a rate increase.[9]

Footnotes

1 Insurance Services Office v. Commissioner of Ins., 381 So. 2d 515 (La. Ct. App. 1st Cir. 1979), writ denied, 382 So. 2d 1391 (La. 1979).

2 Wahl v. American Sec. Ins. Co., 2010 WL 4509814 (N.D. Cal. 2010).

3 Insurance Services Office v. Commissioner of Ins., 381 So. 2d 515 (La. Ct. App. 1st Cir. 1979), writ denied, 382 So. 2d 1391 (La. 1979).

4 Detroit Auto. Inter-Insurance Exchange v. Commissioner of Ins., 119 Mich. App. 113, 326 N.W.2d 444, 33 A.L.R.4th 517 (1982).
As to unfair trade practices, generally, see Am. Jur. 2d, Monopolies, Restraints of Trade, and Unfair Trade Practices §§ 1066 to 1103.

5 Government Employees Ins. Co. and GEICO v. Insurance Com'r, 332 Md. 124, 630 A.2d 713 (1993).

6 Hartford Acc. and Indem. Co. v. Insurance Com'r of Com. of Pa., 65 Pa. Commw. 249, 442 A.2d 382 (1982), order aff'd, 505 Pa. 571, 482 A.2d 542 (1984).

7 State ex rel. Com'r of Ins. v. North Carolina Auto. Rate Administrative Office, 293 N.C. 365, 239 S.E.2d 48 (1977).

8 Massachusetts Auto. Rating and Acc. Prevention Bureau v. Commissioner of Ins., 384 Mass. 333, 424 N.E.2d 1127 (1981).
As to insurance premiums and assessments, generally, see Am. Jur. 2d, Insurance §§ 811 to 925.

9 Merisme v. Board of Appeals on Motor Vehicle Liability Policies and Bonds, 27 Mass. App. Ct. 470, 539 N.E.2d 1052 (1989).

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Research References

West's Key Number Digest

West's Key Number Digest, Insurance 1805 to 1863

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§ 5. Construction of automobile insurance policy

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West's Key Number Digest

West's Key Number Digest, Insurance 1805 to 1810, 1816 to 1863

The construction of an automobile insurance policy is controlled by the same rules of construction as are applied to contracts, generally.[1] In interpreting an insurance policy, a court first looks to the language of the policy itself, and where no dispute surrounds the material facts, interpretation of the policy presents solely a question of law.[2] Automobile insurance policies are contracts, and generally the contract's terms are to be enforced as intended and reasonably understood by the parties unless such terms are prohibited by statute or violate a clearly established public policy.[3]

Automobile liability policies are construed in the light of the purpose to protect those who may be injured by the use of automobiles.[4] If insurance contract provisions are reasonably susceptible of more than one interpretation, they will be construed strictly against insurer and liberally in favor of insured.[5] Thus, liability insurance policies executed, filed, and approved pursuant to the provisions of motor vehicle financial responsibility laws are liberally construed so as to attain the legislative intent to protect the general public from loss by injury or death caused by the negligence of the insured, his agent, his servant, or his independent contractor.[6] Furthermore, an insurance coverage contract required by an uninsured motorist statute must also be liberally construed in favor of the object to be accomplished by such statute.[7] However, while a motor vehicle financial responsibility act must be construed liberally to effect its objects and promote justice,[8] this does not mean all exclusions in such policies are invalid.[9] Unless a policy conflicts with statutory provisions or public policy, it may limit an insurer's liability and impose and enforce reasonable conditions upon the policy obligations that the insurer contractually assumes.[10] In this regard, the courts should not interpret automobile insurance policy provisions in isolation, but instead should evaluate policies as a whole,[11] giving force and effect to each clause in the policy,[12] and different clauses of an insurance contract must be read together and the contract construed so that all of its parts harmonize.[13] A court should endeavor to ascertain the intention of the

parties from the language used, taking into account the situation of the parties, the nature of the subject matter, and the purpose to be accomplished,[14] which may include consideration of other documents sent with the policy to the policyholder.[15]

Unless defined, a court gives an insurance policy's words their plain, ordinary, and popular meaning as understood by the average purchaser of insurance,[16] and construes the terms as they would be understood by a person of ordinary intelligence.[17] However, where a single automobile insurance policy contains different types of coverages, such as liability insurance and uninsured motorist's benefits, definitions contained in one such part do not apply to corresponding terms used in the other.[18] Also, an exclusion pertaining to one type of coverage does not necessarily apply to another coverage contained in the same policy.[19]

Generally, an automobile insurance policy should not be interpreted so as to provide duplication of coverage under distinct clauses of the policy and a duplication of premium charges.[20] However, the interpretation of a policy provision is not affected by another provision which, although contained in the policy, forms no part of the insurance contract, by reason of the fact that no premium charge has been made for the coverage to which the latter provision relates.[21] An insurance policy should not be interpreted in an unreasonable or a strained manner so as to enlarge or to restrict its provisions beyond what is reasonably contemplated by its terms or so as to achieve an absurd conclusion.[22] The fact that the premium on a certain type of coverage is very low does not indicate that the provision must be construed so as to limit the coverage to trifling or trivial damage,[23] but the low amount of the premium may be taken into consideration as a factor indicating the type of insurance contract that the parties intended to enter.[24]

The doctrine of last antecedent, under which a modifying clause is confined to the last antecedent unless there is something in the subject matter or dominant purpose which requires different interpretation has, in some instances, been applied in interpreting provisions of automobile insurance policies.[25] The terms of an automobile rental agreement may be incorporated by reference into an automobile policy covering a car rental company, in some circumstances.[26] However, incorporation by reference in an automobile insurance policy may be prohibited by statute in some states.[27]

Statutory provisions in some states have provided that any policy with a policy period or term of less than six months must be considered as if written for a policy period or term of six months.[28]

Footnotes

1 Smith v. State Farm Mutual Automobile Insurance Company, 2017 COA 6, 2017 WL 117178 (Colo. App. 2017); Blumer v. Automobile Club Inter-Ins. Exchange, 340 S.W.3d 214 (Mo. Ct. App. W.D. 2011).
As to construction of contracts, generally, see Am. Jur. 2d, Contracts §§ 323 to 337.
As to the construction of insurance policies, generally, see Am. Jur. 2d, Insurance §§ 326 to 333.

2 Marentes v. State Farm Mutual Automobile Insurance Company, 2016 WL 7013449 (N.D. Cal. 2016).

3 Countryway Insurance Company v. United Financial Casualty Insurance Company, 496 S.W.3d 424 (Ky. 2016).

4 Barrera v. State Farm Mut. Auto. Ins. Co., 71 Cal. 2d 659, 79 Cal. Rptr. 106, 456 P.2d 674 (1969).

5 State Farm Mutual Automobile Insurance Company v. White, 205 F. Supp. 3d 858 (S.D. Miss. 2016); U.S. Fidelity & Guar. Co. v. Lightning Rod Mut. Ins. Co., 80 Ohio St. 3d 584, 1997-Ohio-311, 687 N.E.2d 717 (1997).
As to effect and interpretation of ambiguities or conflicts in policy language, see § 7.

6 Leonard v. Murdock, 147 Ohio St. 103, 33 Ohio Op. 269, 68 N.E.2d 86 (1946).
As to effect of conflicts with statutory provisions, see § 8.
As to motor vehicle financial responsibility statutes, see §§ 25 to 29.

7 Austin v. State Farm Mut. Auto. Ins. Co., 261 Neb. 697, 625 N.W.2d 213 (2001).
As to uninsured motorist statutes, generally, see §§ 34 to 44.

8 As to construction and effect of motor vehicle financial responsibility laws, see § 27.

9 National Union Fire Ins. Co. v. Reynolds, 77 Haw. 490, 889 P.2d 67 (Ct. App. 1995).

10 Simon v. State Farm Mutual Automobile Insurance Company, 201 So. 3d 1007 (La. Ct. App. 5th Cir. 2016).

11 Estate of Hughes v. State Farm Mutual Automobile Insurance Company, 485 S.W.3d 357 (Mo. Ct. App. W.D. 2016).

12 State Farm Mutual Automobile Insurance Company v. Frounfelter, 2016 WL 6525815 (W.D. Wash. 2016).

13 Johnson v. State Farm Mutual Automobile Insurance Company, 2017 Ark. App. 26, 2017 WL 192676 (2017).

14 State Farm Mutual Automobile Insurance Company v. White, 205 F. Supp. 3d 858 (S.D. Miss. 2016); Iron Horse Auto, Inc. v. Lititz Mut. Ins. Co., 283 Kan. 834, 156 P.3d 1221 (2007).
As to effect and determination of intention of the parties, see § 6.

15 Wright v. State Farm Mut. Auto. Ins. Co., 332 Or. 1, 22 P.3d 744 (2001).

16 State Farm Mutual Automobile Insurance Company v. Frounfelter, 2016 WL 6525815 (W.D. Wash. 2016).

17 Smith v. State Farm Mutual Automobile Insurance Company, 2017 COA 6, 2017 WL 117178 (Colo. App. 2017).
As to effect of definition of policy terms, see § 9.

18 Farber v. Great Am. Ins. Co., 406 F.2d 1228 (7th Cir. 1969).

19 Green v. Commercial Standard Ins. Co., 201 So. 2d 522 (La. Ct. App. 3d Cir. 1967), writ refused, 251 La. 228, 203 So. 2d 558 (1967).

20 Barnard v. Houston Fire & Cas. Ins. Co., 81 So. 2d 132, 54 A.L.R.2d 374 (La. Ct. App. 2d Cir. 1955).

21 Barnard v. Houston Fire & Cas. Ins. Co., 81 So. 2d 132, 54 A.L.R.2d 374 (La. Ct. App. 2d Cir. 1955).

22 State Farm Mutual Automobile Insurance Company v. Safeway Insurance Company of Louisiana, 205 So. 3d 981 (La. Ct. App. 3d Cir. 2016).

23 Guenther v. American Indem. Co., 246 Wis. 478, 17 N.W.2d 570 (1945).

24 Employers Liability Assur. Corp. v. Roux, 98 N.H. 309, 100 A.2d 416 (1953).

25 Rogers v. Allied Mut. Ins. Co., 520 N.W.2d 614 (S.D. 1994).

26 20th Century Ins. Co. v. Liberty Mut. Ins. Co., 965 F.2d 747 (9th Cir. 1992); Lincoln General Ins. Co. v. Smith, 416 Fed. Appx. 795 (10th Cir. 2011) (applying Kansas law).
As to risks and harms covered under liability insurance for automobile rental agencies, generally, see §§ 174 to 186.

27 Cullum v. Farmers Ins. Exchange, 857 P.2d 922, 29 A.L.R.5th 773 (Utah 1993).

28 Folds v. Protective Cas. Ins. Co., 647 So. 2d 1215 (La. Ct. App. 2d Cir. 1994).

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I. In General

B. Construction of Policy

§ 6. Effect of intention of parties on construction of automobile insurance policy

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West's Key Number Digest

West's Key Number Digest, Insurance 1812 to 1814

The rights of the insured and the liability of the insurer under an automobile insurance policy generally must be determined based on the intention of the parties as expressed in the policy.[1] When interpreting an insurance policy, it is the court's job to determine and give effect to the parties' intent, and, when possible, the parties' intent should be determined by the language of the policy alone.[2] The goal in interpreting an insurance contract is to ascertain the intent of the parties, and a court should take into account the subject matter of the contract, the circumstances under which it was made, and the purpose sought to be achieved by the parties.[3] In this regard, a court interpreting an automobile insurance policy must attempt to ascertain the mutual intention of the parties as it existed at the time of the execution of the instrument.[4] If the insurance policy language is fairly susceptible to two different reasonable interpretations, it is ambiguous, and the court may attempt to discern the parties' intent by examining extrinsic evidence, but if the policy remains ambiguous after resort to extrinsic evidence, the court construes the ambiguities against the insurer.[5]

Observation:

The test of the intent of the parties to an automobile insurance policy is the common understanding of persons.[6]

Footnotes

1 Ponder v. State Farm Mut. Auto. Ins. Co., 2000-NMSC-033, 129 N.M. 698, 12 P.3d 960 (2000).

2 Smith v. State Farm Mutual Automobile Insurance Company, 2017 COA 6, 2017 WL 117178 (Colo. App. 2017).
As to construction of automobile insurance policy, see § 5.

3 State Farm Mutual Automobile Insurance Company v. White, 205 F. Supp. 3d 858 (S.D. Miss. 2016).

4 Sampson v. Century Indem. Co., 8 Cal. 2d 476, 66 P.2d 434, 109 A.L.R. 1162 (1937).

5 State Farm Mutual Automobile Insurance Company v. Frounfelter, 2016 WL 6525815 (W.D. Wash. 2016).
As to effect and interpretation of ambiguities or conflicts in policy language, see § 7.

6 Congdon v. Automobile Club Ins. Co., 174 Vt. 586, 816 A.2d 504 (2002).

7 Am. Jur. 2d Automobile Insurance § 7

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I. In General

B. Construction of Policy

§ 7. Effect of ambiguities or conflicts in policy language on construction of automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1831 to 1835(2)

The general rules with regard to the construction of ambiguities in insurance policies in favor of the insured and strictly against the insurer,[1] have been applied in connection with the interpretation of automobile insurance policies.[2] Accordingly, if the automobile insurance policy language is ambiguous, courts will construe the policy liberally in favor of the insured and strictly against the insurer.[3] If a policy provision is susceptible to more than one construction,[4] it must be liberally construed in order to promote recovery for innocent victims of motor vehicle accidents.[5] Some courts, however, are not required to construe ambiguity in an insurance contract against the insurer as a matter of law without resort to extrinsic evidence, but are instead entitled to consider relevant extrinsic or parol evidence to attempt to resolve the ambiguity.[6]

Observation:

The rule of construction that requires ambiguities to be resolved against the insurance company does not apply to the Massachusetts automobile policy because it is drafted by the Commissioner of Insurance, rather than the contracting insurer.[7] Rather, the language should be construed in its usual and ordinary sense.[8]

The rule of liberal construction in favor of the insured applies only when the contract is ambiguous and susceptible of more than one interpretation; where the language is plain and unambiguous there is no occasion for construction, and the language must be given its plain meaning.[9] No rule of construction requires or permits a court to make a contract differing from that made by the parties themselves, or to enlarge an insurance company's obligations where the provisions of its policy are clear.[10] If insurance policy language is unambiguous, courts will give effect to the plain language of the policy without resorting to the rules of construction.[11] Moreover, courts must read the insurance policy as a whole and may not unreasonably distort the language of a policy or exercise inventive powers for the purpose of creating an ambiguity where none exists.[12]

If there is a conflict in meaning between an endorsement and the body of the policy, the endorsement controls.[13] The rule that written or specially prepared portions of a contract control over those which are printed or taken from a form is particularly applicable where the endorsements to an automobile insurance policy are typewritten and the body of the policy is printed.[14]

Footnotes

1 As to construction of automobile insurance policy, see § 5.
As to rule of liberal construction in favor of insured, generally, see Am. Jur. 2d, Insurance § 297.

2 Smith v. State Farm Mutual Automobile Insurance Company, 2017 COA 6, 2017 WL 117178 (Colo. App. 2017); D'Allessandro v. P.F.L. Life Ins. Co., 275 N.J. Super. 213, 645 A.2d 1233 (App. Div. 1994).
As to financial responsibility laws, generally, see §§ 25 to 29.

3 Johnson v. State Farm Mutual Automobile Insurance Company, 2017 Ark. App. 26, 2017 WL 192676 (2017).

4 Smith v. State Farm Mutual Automobile Insurance Company, 2017 COA 6, 2017 WL 117178 (Colo. App. 2017).

5 McNeill v. Maryland Ins. Guaranty Ass'n, 48 Md. App. 411, 427 A.2d 1056 (1981).

6 Pellegrino Food Products Co., Inc. v. American Automobile Ins. Co., 655 F. Supp. 2d 569 (W.D. Pa. 2008).

7 Commerce Ins. Co., Inc. v. Gentile, 472 Mass. 1012, 36 N.E.3d 1243 (2015); Massachusetts Insurers Insolvency Fund v. Premier Ins. Co. of Massachusetts, 439 Mass. 318, 787 N.E.2d 550 (2003).

8 Commerce Ins. Co. v. Blackburn, 81 Mass. App. Ct. 519, 964 N.E.2d 1005 (2012).

9 Michaels v. Michaels, 197 Ohio App. 3d 643, 2012-Ohio-118, 968 N.E.2d 550 (9th Dist. Lorain County 2012).

10 State Farm Mutual Automobile Insurance Company v. White, 205 F. Supp. 3d 858 (S.D. Miss. 2016).

11 Johnson v. State Farm Mutual Automobile Insurance Company, 2017 Ark. App. 26, 2017 WL 192676 (2017).

12 Estate of Hughes v. State Farm Mutual Automobile Insurance Company, 485 S.W.3d 357 (Mo. Ct. App. W.D. 2016).

13 Score v. American Family Mut. Ins. Co., 538 N.W.2d 206 (N.D. 1995).

14 Continental Cas. Co. v. Phoenix Const. Co., 46 Cal. 2d 423, 296 P.2d 801, 57 A.L.R.2d 914 (1956).
As to construction of inconsistencies between written, typewritten, and printed, matter in contracts, generally, see Am. Jur. 2d, Contracts § 376.

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7 Am. Jur. 2d Automobile Insurance § 8

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I. In General

B. Construction of Policy

§ 8. Effect of conflicts with statute on construction of automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1852

In the context of mandatory insurance coverage, statutes relating to an insurance contract are generally part of the contract as a matter of law.[1] When the terms of an insurance policy conflict with mandatory statutory provisions, the statutory provisions must prevail.[2] Conflicts between policy terms and state financial responsibility laws,[3] no-fault insurance laws,[4] and uninsurance or underinsurance coverage laws,[5] must be resolved in favor of the statutorily required coverage, which is read into applicable automobile insurance policies.[6] Any provision in a motor vehicle insurance policy which tends to limit, reduce, or nullify statutorily mandated liability coverage is void and ineffective as against public policy,[7] and the relevant statutory provisions prevail as if embodied in the policy.[8]

However, it is not the function of an appellate court to address matters of policy that are best left to the Commissioner of Insurance or the legislature, in determining coverage of automobile insurance policies.[9]

Footnotes

1 Garrison Property and Casualty Insurance Company v. Rickborn, 2016 WL 7451133 (D.S.C. 2016).

2 Powell v. Clark, 487 S.W.3d 528 (Tenn. Ct. App. 2015), appeal denied (June 12, 2015).
As to automobile insurance required by statute to be provided or offered, generally, see §§ 21 to 24.

3 National Union Fire Ins. Co. of Pittsburgh, Pa. v. Njuguna, 15 F. Supp. 3d 637 (E.D. N.C. 2014).
As to construction and effect of motor vehicle financial responsibility laws, see § 27.

4 Lewis v. Farmers Ins. Exch., 315 Mich. App. 202, 888 N.W.2d 916 (2016).

As to nature and purpose of no-fault insurance, see § 30.

5 Powell v. Clark, 487 S.W.3d 528 (Tenn. Ct. App. 2015), appeal denied (June 12, 2015).

As to nature and scope of statutory uninsured and underinsured motorist coverage, see § 34.

6 Dutton v. American Family Mutual Insurance Company, 454 S.W.3d 319 (Mo. 2015).

7 Gibson v. Northfield Ins. Co., 219 W. Va. 40, 631 S.E.2d 598 (2005).

8 Nakatsu v. Encompass Indemnity Co., 390 S.C. 172, 700 S.E.2d 283 (Ct. App. 2010).

As to construction of automobile insurance policy, see § 5.

9 Kanamaru v. Holyoke Mut. Ins. Co., 72 Mass. App. Ct. 396, 892 N.E.2d 759 (2008).

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7 Am. Jur. 2d Automobile Insurance § 9

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I. In General

B. Construction of Policy

§ 9. Effect of terms defined in policy on construction of automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1824, 1825

Generally, courts will strive to interpret an automobile insurance policy based on the definitions contained within the policy.[1] However, existing and valid statutory provisions enter into and form a part of all contracts of insurance to which they are pertinent and applicable, as fully as if such provisions were written into them.[2] Accordingly, statutory definitions of some terms relating to automobile insurance, as defined by applicable statutes, must, in some instances, be read into automobile insurance policies.[3] For example, where the term "motor vehicle" is defined in a financial responsibility law, similar terms in liability insurance policies must be construed in the light of the statutory definition.[4]

Where an insurance policy contains definitions in a part relating to a particular type of coverage contained in the policy, those definitions are not necessarily applicable to the terms so defined as such terms are used in another part of the policy which pertains to a different type of coverage,[5] particularly where the policy provides that additional definitions within each coverage provision are only for use within that coverage.[6] If neither a relevant statute nor the automobile insurance policy itself defines a particular term which is used in the policy, a court to which the case is presented may determine the meaning of the term in accordance with the established standards of interpretation.[7] While courts may consider a statute in construing the legal effect of a contract, they are not required to look to statutes to interpret the meaning of a contract's words, absent the parties' intent to incorporate a statutory definition.[8]

Footnotes

1 State Farm Mut. Auto. Ins. Co. v. Menendez, 70 So. 3d 566 (Fla. 2011).
As to construction of automobile insurance policy, see § 5.

2 National Union Fire Ins. Co. of Pittsburgh, Pa. v. Njuguna, 15 F. Supp. 3d 637 (E.D. N.C. 2014); Powell v. Clark, 487 S.W.3d 528 (Tenn. Ct. App. 2015), appeal denied (June 12, 2015).
To effectuate the purpose of the Motor Vehicle Financial Responsibility Law, it supplements every insurance policy even if the express terms of the policy do not provide coverage. Dutton v. American Family Mutual Insurance Company, 454 S.W.3d 319 (Mo. 2015).
As to statutes and regulations regarding insurance policies, see Am. Jur. 2d, Insurance § 313.

3 State Farm Mut. Auto. Ins. Co. v. Universal Underwriters Ins. Co., 549 Pa. 518, 701 A.2d 1330 (1997).

4 As to construction and effect of motor vehicle financial responsibility laws, see § 27.

5 Farber v. Great Am. Ins. Co., 406 F.2d 1228 (7th Cir. 1969).

6 Smith v. State Farm Mutual Automobile Insurance Company, 2017 COA 6, 2017 WL 117178 (Colo. App. 2017).

7 Mittelsteadt v. Bovee, 9 Wis. 2d 44, 100 N.W.2d 376, 74 A.L.R.2d 1259 (1960).

8 Smith v. State Farm Mutual Automobile Insurance Company, 2017 COA 6, 2017 WL 117178 (Colo. App. 2017).

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I. In General

C. Binders

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Research References

West's Key Number Digest

West's Key Number Digest, Insurance 1625, 1638 to 1641, 1729, 1743 to 1745, 1747, 1748, 1761, 1762, 1841, 1912, 1929(1) to 1929(13), 1969

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A.L.R. Index, Automobile Insurance

West's A.L.R. Digest, Insurance 1625, 1638 to 1641, 1729, 1743 to 1745, 1747, 1748, 1761, 1762, 1841, 1912, 1929(1) to 1929(13), 1969

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7 Am. Jur. 2d Automobile Insurance § 10

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I. In General

C. Binders

§ 10. Nature of binders for automobile insurance; validity of oral agreements

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1743 to 1745, 1747, 1748, 1841, 1969

A.L.R. Library

Temporary automobile insurance pending issuance of policy, 12 A.L.R.3d 1304

Forms

Forms relating to oral automobile insurance contracts, generally, see Am. Jur. Pleading and Practice Forms, Automobile Insurance [Westlaw®(r) Search Query]

Forms relating to temporary insurance, generally, see Am. Jur. Pleading and Practice Forms, Insurance [Westlaw®(r) Search Query]

The general procedure for automobile insurance is that upon application, temporary insurance is usually evidenced by a binding slip or interim receipt, usually called a "binder." A "binder" is a temporary contract of insurance, pending the issuance of a formal policy or proper rejection by the insurer.[1] Binders are issued in automobile insurance situations to allow the applicant

to use the vehicle while awaiting a decision from the insurance company whether it will insure the driver.[2] The binder may provide the proof of insurance needed for someone to register and operate a motor vehicle.[3]

Binders are often written,[4] however, a binder for automobile insurance may be given orally,[5] and may be evidenced by such things as a receipt for premiums tendered to an agent who had the apparent authority to bind the insurance company.[6] In this regard, a simple oral statement that the applicant is "covered," may be sufficient,[7] while a statement by the insurer's representative that "we can take care of that" may not create an oral agreement that an automobile will be fully insured.[8]

A binder which does not designate any specific endorsements in effect at the time of the accident is deemed under state law to include the "usual exclusions," which are later included in a written endorsement.[9]

Footnotes

1 As to binders, generally, see Am. Jur. 2d, Insurance § 239.

2 Terry v. Mongin Ins. Agency, 102 Wis. 2d 239, 306 N.W.2d 270 (Ct. App. 1981), decision aff'd, 105 Wis. 2d 575, 314 N.W.2d 349 (1982).

3 Jackson v. Transamerica Ins. Corp. of America, 207 Mich. App. 460, 526 N.W.2d 31 (1994).

4 As to form of temporary insurance or binder, see Am. Jur. 2d, Insurance § 241.

5 Sanders v. State Farm Mut. Auto. Ins. Co., 865 A.2d 522 (Del. 2004).

6 Russell v. Eckert, 195 So. 2d 617 (Fla. 2d DCA 1967).

7 Littell v. Republic-Franklin Ins. Co., 1 Ohio App. 2d 524, 30 Ohio Op. 2d 543, 205 N.E.2d 580, 12 A.L.R.3d 1296 (3d Dist. Union County 1965).

8 Johnson v. Geico General Ins. Co., 2016 WI App 26, 367 Wis. 2d 749, 877 N.W.2d 651 (Ct. App. 2016).
As to authority of insurance agent or subagent to bind automobile insurer and ratification of unauthorized acts, see § 11.

9 Underwriters at Lloyds London v. STD Enterprises, Inc., 395 F. Supp. 2d 1142 (M.D. Fla. 2005).

7 Am. Jur. 2d Automobile Insurance § 11

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I. In General

C. Binders

§ 11. Authority of insurance agent or subagent to bind automobile insurer; ratification of unauthorized acts

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1625, 1638 to 1641, 1744

A.L.R. Library

Temporary automobile insurance pending issuance of policy, 12 A.L.R.3d 1304

Forms

Forms relating to authority to bind insurer, generally, see Am. Jur. Pleading and Practice Forms, Insurance [Westlaw®(r) Search Query]

Ordinarily, a general agent or its subagent has authority to issue binders or make contracts for temporary insurance,[1] as has any other agent or director or officer of the insurance company who is authorized to issue policies.[2] Further, the agent's "scope of authority" includes not only the actual authorization conferred upon the agent by the principal, but also that which has apparently been delegated to the agent. Apparent authority, or ostensible authority, is that which, though not actually granted, the principal

knowingly permits the agent to exercise, or which the principal holds the agent out as possessing.[3] An applicant for automobile insurance may rely on the apparent authority of an agent to issue binders,[4] and is not bound by any restrictions on that authority unless they are known or brought to the notice of the applicant.[5] However, a practice which might lead one to believe that an agent has authority to issue automobile binders does not necessarily entitle one who has no knowledge of that practice to rely upon the agent's apparent authority, because it is the applicant's reliance on appearances which is the essence of the doctrine of apparent authority, and the mere fact that an agent procures a policy cannot by itself establish an apparent authority to bind the issuer.[6] On the other hand, if an agent of a company issuing automobile insurance has apparent authority to bind the insurer, secret limitations on that power will not invalidate an insurance binder issued by such agent if the limitation was not known to the applicant.[7]

Observation:

A statute permitting insurance companies to issue temporary binders and providing rules to govern those binders does not require companies to issue binders, and thus, the statute does not create the power in an agent to bind an insurance company.[8]

In keeping with the general rule that where an insurance agent delegates authority within the scope of his or her own agency to subagents, clerks, or assistants, the insurer becomes bound by their acts to the same extent as by the acts of the agent him- or herself,[9] the clerk of a general agent for an automobile insurer who undertakes to speak for the agent may bind the insurer to an enforceable contract of temporary insurance.[10]

An automobile insurer may ratify the receipt of an application by an unauthorized person purporting to act for it by issuing a policy based on the application; if it does so, the ratification extends to the entire transaction and the insurer cannot accept the benefits of the unauthorized transaction and reject its burdens.[11]

Footnotes

1 As to nature of binders for automobile insurance policies and validity of oral agreements, see § 10.

2 As to authority of agent to make temporary insurance or binder, see Am. Jur. 2d, Insurance § 208.

3 As to apparent authority of agent, see Am. Jur. 2d, Agency §§ 71 to 75.

4 Dixie Ins. Co. v. Joe Works Chevrolet, Inc., 298 Ark. 106, 766 S.W.2d 4 (1989).

5 Cascioli v. Central Mut. Ins. Co., 4 Ohio St. 3d 179, 448 N.E.2d 126 (1983).

6 Commercial Cas. Ins. Co. v. Mansfield, 98 N.H. 120, 96 A.2d 558 (1953).
Representations by an automobile insurer's employee, allegedly informing the insured that retroactive coverage would be provided, did not create an oral binder between the insured and insurer, since the employee did not have actual or apparent authority to bind the insurer to retroactive coverage. Rutland v. State Farm Mut. Auto. Ins. Co., 426 Fed. Appx. 771 (11th Cir. 2011) (applying Georgia law).

7 Financial Indem. Co. v. Murphy, 223 Cal. App. 2d 621, 35 Cal. Rptr. 913 (1st Dist. 1963).

8 Gunn v. Farmers Ins. Exchange, 2010 Ark. 434, 372 S.W.3d 346 (2010).

9 As to power of subagents or assistants to bind insurer, see Am. Jur. 2d, Insurance § 136.

10 Guipre v. Kurt Hitke & Co., 109 Cal. App. 2d 7, 240 P.2d 312 (4th Dist. 1952).

11 Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962).

As to ratification by an insurer of unauthorized acts, so as to bind the insurer, generally, see Am. Jur. 2d, Insurance §§ 137, 138.

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7 Am. Jur. 2d Automobile Insurance § 12

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I. In General

C. Binders

§ 12. Requisites and elements of automobile insurance binder

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1729, 1748

A.L.R. Library

Temporary automobile insurance pending issuance of policy, 12 A.L.R.3d 1304

To constitute a valid automobile insurance binder, the subject matter, the risk insured against, the duration of the risk, the amount of coverage, the amount of the premiums, and the identity of the parties must be agreed upon.[1] However, because a binder is an informal instrument, and may consist of an oral agreement,[2] various elements may be supplied by inference from the circumstances.[3] Essential elements of the contract, as well as terms and conditions governing the enforcement of automobile insurance binders, may be supplied from the standard form policy applied for or customarily used by the company,[4] or, in the case of an automobile insurance renewal binder, from the old policy being replaced, since such terms and conditions are presumed to be incorporated into the binder.[5] As a contract of temporary insurance effective until a formal policy is issued,[6] an automobile insurance binder is subject to the terms of the policy to be issued or ordinarily used by the insurer, including statutory provisions incorporated in the policy.[7] Similarly, the duration of the risk to be assumed by the insurance company may be implied as the term customarily used.[8] However, while an oral automobile insurance binder may contemplate all the provisions of the standard contract generally issued by the insurer, the parties may expressly or impliedly agree in the binder that a certain provision of the policy is not to be included in the binder.[9] Also, a binder may expressly state the time when it goes into effect.[10]

Observation:

The terms of the policy issued supersede those specified in the automobile insurance binder. Thus, for example, where the binder of a motor vehicle liability coverage specified a slightly different expiration time than did the subsequently issued motor vehicle liability policy, the expiration time and date specified in the policy superseded that specified in the binder.[11]

Footnotes

1 State Auto. Mut. Ins. Co. v. Babcock, 54 Mich. App. 194, 220 N.W.2d 717 (1974).
As to requisites and elements of binders and payment of premium and identity of insurer, see §§ 13, 14.

2 As to validity of oral binders, see § 10.

3 Lynn v. Farm Bureau Mut. Auto. Ins. Co., 264 F.2d 921 (4th Cir. 1959).

4 Robinson v. State Farm Mut. Auto. Ins. Co., 188 Neb. 470, 197 N.W.2d 396 (1972).

5 Pan Am. Ins. Co. v. Santos, 295 S.W.2d 254 (Tex. Civ. App. San Antonio 1956), writ refused n.r.e.

6 As to nature of binders for automobile insurance policies, see § 10.

7 Terry v. Mongin Ins. Agency, 102 Wis. 2d 239, 306 N.W.2d 270 (Ct. App. 1981), decision aff'd, 105 Wis. 2d 575, 314 N.W.2d 349 (1982).

8 Lynn v. Farm Bureau Mut. Auto. Ins. Co., 264 F.2d 921 (4th Cir. 1959).

9 State Auto. Mut. Ins. Co. v. Lloyd, 54 Tenn. App. 587, 393 S.W.2d 17 (1965).

10 Overseas & Domestic Underwriters, Ltd., Inc. v. Riggins, 176 Ga. App. 833, 338 S.E.2d 31 (1985).

11 Green v. Progressive Ins. Co., 196 Ga. App. 733, 397 S.E.2d 20 (1990).

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7 Am. Jur. 2d Automobile Insurance § 13

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I. In General

C. Binders

§ 13. Requisites and elements of automobile insurance binder—Payment of premium

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1761, 1762

A payment of the premium is not a prerequisite to a valid automobile insurance binder.[1] Thus, an agreement to pay the premium, express or implied, is considered sufficient consideration,[2] and the mere existence of a binder will usually imply an agreement to pay the customary premium rate.[3] An automobile insurance policy is not a nullity for lack of consideration based on the insured's first premium payment being dishonored, as the insured's promise to purchase the policy made at the time the binder is issued satisfies the contract law requirement of consideration, and the insured's failure to pay the promised premium is a failure of performance, not a lack of consideration.[4] Furthermore, the payment of a premium on a temporary binder of automobile insurance is unnecessary to effect coverage where the insured is never requested to make payment and does not agree to make payments prior to the date of the collision.[5]

Observation:

The issuance of a temporary insurance card, by itself, does not validate the existence of a policy; identification cards can only be meant to be valid if the premium is paid by the due date.[6]

Footnotes

1 Dixie Ins. Co. v. Joe Works Chevrolet, Inc., 298 Ark. 106, 766 S.W.2d 4 (1989).
As to nature of binders for automobile insurance policies, see § 10.
As to requisites and elements of binders for automobile insurance policies, see § 12.
As to the necessity of payment of the first premium before coverage under an insurance policy will attach, generally, see Am. Jur. 2d, Insurance § 258.

2 Pennsylvania Cas. Co. v. Upchurch, 139 F.2d 892 (C.C.A. 5th Cir. 1943).

3 Austin v. New Brunswick Fire Ins. Co. of New Brunswick, N.J., 111 Mont. 192, 108 P.2d 1036 (1940).

4 Source One Financial Corp. v. Progressive Direct Ins. Co., 2015 Mass. App. Div. 167, 2015 WL 6739184 (2015).

5 Monsantofils v. Gacek Ins. Agency, Inc., 282 Or. 3, 576 P.2d 789 (1978).

6 Wright v. Blevins, 380 S.W.3d 8 (Mo. Ct. App. E.D. 2012).

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7 Am. Jur. 2d Automobile Insurance § 14

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I. In General

C. Binders

§ 14. Requisites and elements of automobile insurance binder—Identity of insurer

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West's Key Number Digest

West's Key Number Digest, Insurance 1748

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Temporary automobile insurance pending issuance of policy, 12 A.L.R.3d 1304

The failure to designate the insurance company upon which a binder is allegedly given is fatal.[1] However, if an agent represents several companies, any one of which might have written the automobile insurance, but only one of such companies has authorized the agent to issue binders,[2] or if only one of them writes automobile insurance, the type of insurance for which the binder is given,[3] such company will be assumed to be the party to the contract. Similarly, if an insurance agent, in an automobile insurance binder, designates the insurer by a phrase which could be applied to more than one insurance company, the insurer nevertheless is adequately described where the agent is an agent for only one of those companies.[4]

Footnotes

1 Fuller v. Eastern Fire & Cas. Ins. Co., 240 S.C. 75, 124 S.E.2d 602 (1962).
As to nature of binders for automobile insurance policies, see § 10.
As to requisites and elements of binders for automobile insurance policies, see § 12.

2 Guipre v. Kurt Hitke & Co., 109 Cal. App. 2d 7, 240 P.2d 312 (4th Dist. 1952).

3 Austin v. New Brunswick Fire Ins. Co. of New Brunswick, N.J., 111 Mont. 192, 108 P.2d 1036 (1940).

4 Pan Am. Ins. Co. v. Santos, 295 S.W.2d 254 (Tex. Civ. App. San Antonio 1956), writ refused n.r.e.

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7 Am. Jur. 2d Automobile Insurance § 15

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Automobile Insurance

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I. In General

C. Binders

§ 15. Misrepresentations by or on behalf of applicant for automobile insurance binder

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1912

A.L.R. Library

Temporary automobile insurance pending issuance of policy, 12 A.L.R.3d 1304

Misrepresentations by the applicant may entitle the insurance company to void its binder from the time of its apparent inception if the misrepresentations were material to the risk and might have prevented the agent from issuing a binder if he or she had known the true situation.[1] However, misrepresentations made after the binder has been issued cannot enable the insurer to terminate coverage ab initio, because they could not have been relied upon by the insurer or its agent in issuing the binder.[2]

Where an agent is given the true facts by the applicant, or otherwise knows them, and, acting without the knowledge or collusion of the applicant, the agent mistakenly or intentionally misrepresents the facts on the application, the insurer cannot set up such misrepresentations in avoidance of coverage under a binder, because the agent generally is regarded to be the agent of the insurer, and not the applicant.[3] Also, under certain circumstances, constructive knowledge will not be imputed to an applicant who signs the application without reading it.[4]

Footnotes

1 State Farm Mut. Auto. Ins. Co. v. Crouch, 706 S.W.2d 203 (Ky. Ct. App. 1986).
As to misrepresentations, warranties, and conditions for automobile insurance policy, see §§ 57 to 86.

2 Simons v. American Fire Underwriters of American Indem. Co., 203 S.C. 471, 27 S.E.2d 809 (1943).

3 Voss v. American Mut. Liability Ins. Co., 341 S.W.2d 270 (Mo. Ct. App. 1960).

4 State Farm Mut. Auto. Ins. Co. v. Newell, 270 Ala. 550, 120 So. 2d 390 (1960).

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7 Am. Jur. 2d Automobile Insurance § 16

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Automobile Insurance

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I. In General

C. Binders

§ 16. Termination of coverage under automobile insurance binder; necessity of notice

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1912, 1929(1) to 1929(13)

A.L.R. Library

Temporary automobile insurance pending issuance of policy, 12 A.L.R.3d 1304

Coverage under an automobile insurance binder generally cannot be terminated until the applicant receives notice of the insurer's rejection of the risk,[1] containing a categorical rejection of the risk covered by the binder, such as would cause a reasonable insured to believe that the binder has terminated.[2] Further, a notice sent before, but not received until after, an accident is insufficient to avoid responsibility of the insurer.[3] Notice of termination of coverage given to the insurance agent, but not communicated to the applicant, does not effect a cancellation of the binder,[4] unless the insurance agent is shown to be the agent of the applicant and not of the insurer,[5] as sometimes can be done in the case of a broker or a soliciting agent, as distinguished from a general agent.[6]

While an oral insurance binder may contemplate all the provisions of the standard automobile insurance contract generally issued by the insurer,[7] including the standard policy's provisions as to notice of cancellation, the parties may expressly or impliedly agree to the contrary.[8] An automobile insurance binder, being subject to the terms of the policy to be issued or ordinarily used by insurer, including statutory provisions incorporated in the policy,[9] may include statutory requirements of notice of

cancellation.[10] Also, where the attempted cancellation of the binder does not meet statutory requirements,[11] cancellation is ineffective.[12] However, there is some authority for the view that where the term of coverage of an automobile insurance binder is regulated by statute, an applicant for insurance will be charged with knowledge of the binder's expiration after the statutorily specified time period, and, thus, is not entitled to coverage after the expiration of that period if an automobile insurance policy has not been issued.[13]

Where an automobile insurance binder is extended by an agent beyond its term, a statute requiring formal notice of cancellation of automobile insurance policies may apply to the cancellation of the binder.[14]

A binder issued to a state resident and providing basic third-party liability insurance and basic personal injury benefits could not be voided ab initio based on misrepresentations made in the insurance application once there had been an automobile accident giving rise to a claimed loss.[15]

Observation:

Even though an oral automobile insurance binder may be cancelled by an agent after the applicable time because of the insured's failure to supply requested information, where the subsequent conduct of an insurance agent is ambiguous and reasonably susceptible to the interpretation that another binder agreement is contemplated, the court may consider a binder as being in effect.[16]

Footnotes

1 Hershaw v. Farm & City Ins. Co., 32 Kan. App. 2d 684, 87 P.3d 360 (2004).

2 Shaffer v. Mico Ins. Co., 43 Ohio Misc. 2d 1, 539 N.E.2d 1164 (Mun. Ct. 1988).

3 Strickler v. Huffine, 421 Pa. Super. 463, 618 A.2d 430 (1992).
As to termination of automobile insurance policies, generally, see §§ 50 to 56.

4 Financial Indem. Co. v. Murphy, 223 Cal. App. 2d 621, 35 Cal. Rptr. 913 (1st Dist. 1963).

5 As to independent agents being considered agents of the applicant, generally, see Am. Jur. 2d, Insurance § 113.

6 Altrocchi v. Hammond, 17 Ill. App. 2d 192, 149 N.E.2d 646 (2d Dist. 1958).

7 As to binders for automobile insurance policies and validity of oral agreements, see § 10.
As to requisites and elements of binders for automobile insurance policies, see § 12.

8 State Auto. Mut. Ins. Co. v. Lloyd, 54 Tenn. App. 587, 393 S.W.2d 17 (1965).

9 As to effect of statutory provisions and definition of policy terms on construction of automobile insurance policy, see §§ 8, 9.

10 Terry v. Mongin Ins. Agency, 102 Wis. 2d 239, 306 N.W.2d 270 (Ct. App. 1981), decision aff'd, 105 Wis. 2d 575, 314 N.W.2d 349 (1982).

11 Liberty Mut. Ins. Co. v. Maleski, 658 A.2d 463 (Pa. Commw. Ct. 1995).

12 Terry v. Mongin Ins. Agency, 102 Wis. 2d 239, 306 N.W.2d 270 (Ct. App. 1981), decision aff'd, 105 Wis. 2d 575, 314 N.W.2d 349 (1982).

13 Southern General Ins. Co. v. Snipes, 196 Ga. App. 727, 396 S.E.2d 808 (1990).

14 Miney v. Baum, 170 N.J. Super. 282, 406 A.2d 234 (Law Div. 1979).

15 Sentry Indem. Co. v. Sharif, 248 Ga. 395, 282 S.E.2d 907 (1981).
As to termination of automobile insurance, generally, on the basis of the insured's fraud or misrepresentation, see § 57.

16 Farm Bureau Mut. Ins. Co. of Arkansas, Inc. v. Milburn, 269 Ark. 384, 601 S.W.2d 841 (1980).

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I. In General

D. Insurable Interest

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Insurance 1779, 1780, 1794, 1794.5

A.L.R. Library

A.L.R. Index, Automobile Insurance

West's A.L.R. Digest, Insurance 1779, 1780, 1794, 1794.5

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7 Am. Jur. 2d Automobile Insurance § 17

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I. In General

D. Insurable Interest

§ 17. Necessity of insurable interest for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1779, 1780, 1794, 1794.5

A.L.R. Library

Liability insurance: insurable interest, 1 A.L.R.3d 1193

Generally, an insurable interest is necessary to the validity of an insurance contract, whatever the subject matter of the policy, whether upon property or life, and if no insurable interest exists, the contract is void.[1] An insured must have an insurable interest to support the existence of a valid automobile liability insurance policy, and the insurable interest must be that of a named insured.[2] Public policy forbids the issuance of an insurance policy where the insured lacks an insurable interest; a policy is void when there is not an insurable interest.[3] However, it has sometimes been said that the question of "insurable interest" as it relates to loss coverage of an automobile is not controlled by the general principles or cases relating to other forms of property.[4]

An interest in the subject of the insurance is required with regard to fire,[5] theft,[6] or collision[7] insurance on motor vehicles.[8] While there is some authority for the view that the rule requiring an insurable interest is not applicable to liability insurance,[9] other cases have expressly stated that automobile liability protection is not excepted from the doctrine of insurable interest,[10] that an insurable interest is required for liability insurance,[11] and have analyzed liability and coverage issues based on whether there was an insurable interest in the automobile liability insurance.[12]

CUMULATIVE SUPPLEMENT

Cases:

Vehicle purchaser was not insured under seller's automobile insurance policy; although purchaser was temporarily unable to obtain new certificate of title due to seller's inadvertent failure to complete odometer certification until error was rectified, seller did not have insurable interest in vehicle and did not have authority to grant use of vehicle to purchaser. Va. Code Ann. §§ 38.2-303, 38.2-2206(B). Fagg v. Progressive Gulf Insurance Company, 433 F. Supp. 3d 923 (W.D. Va. 2020).

[END OF SUPPLEMENT]

Footnotes

1 As to what constitutes insurable interest for automobile insurance, see §§ 18 to 20.
As to necessity of insurable interest, see Am. Jur. 2d, Insurance § 927.

2 Morrison v. Secura Ins., 286 Mich. App. 569, 781 N.W.2d 151 (2009).

3 Sparks v. Trustguard Ins. Co., 389 S.W.3d 121 (Ky. Ct. App. 2012); Corwin v. DaimlerChrysler Ins. Co., 296 Mich. App. 242, 819 N.W.2d 68 (2012).

4 Horton v. State Farm Fire & Cas. Co., 550 S.W.2d 806 (Mo. Ct. App. 1977).

5 U. S. Fidelity & Guaranty Co. v. Reagan, 256 N.C. 1, 122 S.E.2d 774 (1961).

6 Gordon v. Gulf Am. Fire & Cas. Co., 113 Ga. App. 755, 149 S.E.2d 725 (1966).

7 Moore v. State Farm Mut. Auto. Ins. Co., 381 S.W.2d 161 (Mo. Ct. App. 1964).

8 P. & E. Finance Co. v. Globe & Republic Ins. Co. of America, 1951 OK 92, 205 Okla. 627, 239 P.2d 1009, 29 A.L.R.2d 933 (1951).

9 Kahn v. Lockhart, 392 S.W.2d 30 (Mo. Ct. App. 1965).

10 Osborne v. Security Ins. Co., 155 Cal. App. 2d 201, 318 P.2d 94 (2d Dist. 1957).
As to the concept of insurable interest in connection with insurance, generally, see Am. Jur. 2d, Insurance §§ 926 to 932.

11 American Mut. Fire Ins. Co. v. Passmore, 275 S.C. 618, 274 S.E.2d 416 (1981).

12 Mercury Casualty Company v. Chu, 229 Cal. App. 4th 1432, 178 Cal. Rptr. 3d 144 (4th Dist. 2014); Allstate Ins. Co. v. Liberty Mut. Ins. Group, 868 P.2d 110 (Utah Ct. App. 1994).
As to what constitutes insurable interest and liability insurance, see § 20.

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7 Am. Jur. 2d Automobile Insurance § 18

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I. In General

D. Insurable Interest

§ 18. What constitutes insurable interest for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1779, 1794.5

A.L.R. Library

Insurable interest predicated upon invalid or unenforceable contract, 9 A.L.R.2d 181

The general rule that anyone has an insurable interest in property who derives a benefit from its existence or would suffer loss from its destruction[1] applies to motor vehicle insurance.[2] It is not necessary, to constitute an insurable interest, that the interest be such that the event insured against would necessarily subject the insured to loss; it is sufficient that it might do so and that pecuniary injury would be the natural consequence.[3]

While title to a motor vehicle will generally provide an insurable interest in the vehicle,[4] a person may have an insurable interest in an automobile even though he or she does not own[5] or have legal title to the vehicle.[6] An insurable interest need not be in the nature of ownership, but rather can be any kind of benefit from the thing so insured or any kind of loss that would be suffered by its damage or destruction.[7] An insurable interest in property may be entirely disconnected from any title, lien, or possession, and may derive solely from possession, enjoyment, or profits of the property, as well as other certain benefits growing out of or dependent upon it.[8] Thus, the registrant,[9] holder of a security interest,[10] or a mechanic's lienholder for unpaid repairs,[11] may have insurable interests in a motor vehicle. Also, one has an insurable interest in an automobile, despite not having title, where

he or she is the sole possessor and user of the vehicle, is a signatory, as registered owner, on a security agreement, and could be financially liable under the terms of the agreement.[12]

However, a person has no insurable interest where the only right to a car arises under a contract which is void or unenforceable, either at law or in equity.[13] The failure to comply with statutory requirements as to the transfer of motor vehicles makes the transfer void and results in the failure of the purchaser of the motor vehicle to have an insurable interest in the property.[14] Moreover, a previous owner has no insurable interest in the vehicle following the sale.[15]

Footnotes

1 As to nature of insurable interest, see Am. Jur. 2d, Insurance § 926.

2 Dorsey Mississippi Sales, Inc. v. Newell, 251 Miss. 77, 168 So. 2d 645 (1964).

3 American Family Mut. Ins. Co. v. Coke, 358 S.W.3d 576 (Mo. Ct. App. E.D. 2012); Silberman v. Royal Ins. Co., 184 A.D.2d 562, 584 N.Y.S.2d 625 (2d Dep't 1992).

4 Cotton States Mut. Ins. Co. v. Gomez, 192 Ga. App. 76, 383 S.E.2d 567 (1989).

5 Giddens v. USAA Property and Cas. Ins. Co., 644 So. 2d 827 (La. Ct. App. 1st Cir. 1994).

6 Corwin v. DaimlerChrysler Ins. Co., 296 Mich. App. 242, 819 N.W.2d 68 (2012).
As to title as not being a requisite to an insurable interest in property, see Am. Jur. 2d, Insurance § 934.

7 Morrison v. Secura Ins., 286 Mich. App. 569, 781 N.W.2d 151 (2009).

8 American Family Mut. Ins. Co. v. Coke, 358 S.W.3d 576 (Mo. Ct. App. E.D. 2012).

9 Chibas v. Interboro Mut. Indem. Ins. Co., 164 Misc. 2d 1045, 630 N.Y.S.2d 1013 (App. Term 1995).

10 Trust Co. of Georgia v. Thompson, 133 Ga. App. 866, 212 S.E.2d 498 (1975).

11 Geller v. General Agents Ins. Co. of America, Inc., 841 S.W.2d 205 (Mo. Ct. App. W.D. 1992).

12 Taylor v. Allstate Ins. Co., 214 A.D.2d 610, 624 N.Y.S.2d 644 (2d Dep't 1995).
Under Florida law, a husband had an ownership interest in the vehicle, as required to insure it under the automobile policy, notwithstanding that his wife, until they began the process of dissolving their marriage, had driven the vehicle, had insured it, and title was solely in her name; the husband owed money on the promissory note for the vehicle as the sole obligor, he brought the vehicle to the used car dealership to be sold on his behalf, and he expected to obtain ownership and exclusive use and possession rights in the vehicle pursuant to the terms of the marital settlement agreement. Youngblood v. State Farm Mut. Auto. Ins. Co., 638 Fed. Appx. 837 (11th Cir. 2015).

13 Shaffer v. Calvert Fire Ins. Co., 135 W. Va. 153, 62 S.E.2d 699 (1950).

14 Moore v. State Farm Mut. Auto. Ins. Co., 381 S.W.2d 161 (Mo. Ct. App. 1964).
Where a buyer purchased an automobile for the benefit of his 17-year-old cousin for the latter's use as a means of transportation during the school year, and the policy was issued to the cousin, who was then living with the buyer, the cousin had no insurable interest in the automobile. Universal C. I. T. Corp. v. Foundation Reserve Ins. Co., 1969-NMSC-013, 79 N.M. 785, 450 P.2d 194 (1969).

15 Reeder v. Auto Owners Ins. Co., 2016 IL App (3d) 150252-U, 2016 WL 885145 (Ill. App. Ct. 3d Dist. 2016).

7 Am. Jur. 2d Automobile Insurance § 19

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I. In General

D. Insurable Interest

§ 19. What constitutes insurable interest for automobile insurance—Purchaser of stolen vehicle

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1779, 1794.5

A.L.R. Library

Automobile fire, theft, and collision insurance: insurable interest in stolen motor vehicle, 38 A.L.R.4th 538

Similar to the division of authority over whether title to an automobile is necessary for one to have an insurable interest in the automobile,[1] some courts take the view that one having only possession, but no title, who innocently purchases a stolen automobile can have no insurable interest in such automobile and cannot recover under his or her policy for the vehicle's loss or destruction,[2] while others find an innocent purchaser of a stolen vehicle may have an insurable interest in the vehicle.[3] The finding of such an interest in the case of the purchase of a stolen vehicle has been based upon an economic interest in protecting the money paid for the vehicle,[4] as well as under state statutes defining an "insurable interest" as any actual, lawful, and substantial economic interest in the safety or preservation of the subject of the insurance free from loss, destruction, or pecuniary damage or impairment.[5] Also, an insurable interest has been said to exist with regard to the purchase of a stolen vehicle based on the "factual expectations" theory, which posits that an insurable interest exists if the insured will gain economic advantage from the continued existence of the property or will suffer economic disadvantage upon damage to, or loss of, the property.[6] Furthermore, the view of an insurable interest in a purchased stolen vehicle has been based on the possessory interest which is good against all but the true owner.[7] On the other hand, the view has been taken that even if title is not necessary for an insurable interest, a mere possessory interest in a stolen vehicle does not give rise to such an insurable interest.[8]

Where an insurable interest may arise from the purchase of a stolen vehicle, generally, such result occurs only where the insured purchases the vehicle for value and without knowledge that it was stolen.[9] Where the buyer knows, or has reason to know, that the vehicle was stolen, no insurable interest arises,[10] although there is also some authority that the purchaser of a stolen vehicle may have an insurable interest, even when not an innocent purchaser, where an insurable interest is defined in terms of the insured's economic interest in the article covered.[11]

Observation:

Whether or not the automobile insureds, as good faith purchasers of automobiles that were later determined to have been stolen, had an insurable interest in the automobiles, was irrelevant to the issue of whether the insureds' automobile policies provided coverage for the seizure of the automobiles by law enforcement authorities, as the seizure of automobiles did not constitute an insurable loss under the policies.[12]

Footnotes

1 § 18.

2 Herrington v. American Sec. Ins. Co., 124 Ga. App. 617, 184 S.E.2d 673 (1971).

3 Riley v. Mid-Century Insurance Exchange, 118 Cal. App. 3d 195, 173 Cal. Rptr. 257 (2d Dist. 1981); Shockley v. Harleysville Mut. Ins. Co., 381 Pa. Super. 287, 553 A.2d 973 (1988).

4 Smith v. State Farm Mut. Auto. Ins. Co., 220 So. 2d 389 (Fla. 3d DCA 1969), opinion modified on other grounds, 231 So. 2d 193 (Fla. 1970).

5 Butler v. Farmers Ins. Co. of Arizona, 126 Ariz. 371, 616 P.2d 46 (1980).

6 Granite State Ins. Co. v. Lowe, 362 So. 2d 240 (Ala. Civ. App. 1978), writ denied, 362 So. 2d 241 (Ala. 1978); Snethen v. Oklahoma State Union of Farmers Educational and Co-op. Union of America, 1983 OK 17, 664 P.2d 377, 38 A.L.R.4th 531 (Okla. 1983).

7 Reznick v. Home Ins. Co., 45 Ill. App. 3d 1058, 4 Ill. Dec. 525, 360 N.E.2d 461 (1st Dist. 1977).

8 Friscia v. Safeguard Ins. Co., 57 Misc. 2d 759, 293 N.Y.S.2d 695 (N.Y. City Civ. Ct. 1968).

9 Scarola v. Insurance Co. of North America, 31 N.Y.2d 411, 340 N.Y.S.2d 630, 292 N.E.2d 776, 12 U.C.C. Rep. Serv. 280 (1972).

10 Nelson v. New Hampshire Fire Ins. Co., 263 F.2d 586 (9th Cir. 1959).

11 Treit v. Oregon Auto. Ins. Co., 262 Or. 549, 499 P.2d 335 (1972).

12 State Farm Mut. Auto. Ins. Co. v. Rodriguez, 2013 IL App (1st) 121388, 370 Ill. Dec. 130, 987 N.E.2d 896 (App. Ct. 1st Dist. 2013).

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I. In General

D. Insurable Interest

§ 20. What constitutes insurable interest for automobile insurance—Liability insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1779, 1794, 1794.5

A.L.R. Library

Liability insurance: insurable interest, 1 A.L.R.3d 1193

While one who does not hold legal title to a vehicle cannot obtain owner's liability insurance thereon,[1] and, in some states, liability coverage which is premised on ownership, maintenance, or use of a designated automobile terminates with respect to the automobile upon a change of ownership,[2] the only interest necessary to sustain the validity of an automobile liability insurance policy is that the insured might incur liability because of the operation or use of the automobile.[3] Thus, for example, the right of an insured to recover under the liability provisions of an automobile policy does not depend upon being a holder of an equitable, legal, or real interest in the property covered, because the risk or hazard insured against is the loss and injury to others resulting from the use of the covered vehicle; therefore, in the area of liability insurance, a person or other legal entity has an unlimited insurable interest in his or its individual liability.[4] Potential liability from the use of a motor vehicle sufficient to create an insurable interest may be vicarious, and may arise where it is contemplated that the vehicle may be driven by a servant or agent of the insured,[5] or where, for some other reason, the insured may be vicariously liable for injuries caused through the use of the vehicle.[6]

No legal or equitable interest in the insured vehicle as property is necessary to support an insurable interest regarding liability insurance.[7] Thus, the right to recover does not depend upon the insured's being the holder of either a legal or equitable title in the automobile, but upon whether he or she is charged at law or in equity with the liability against which the insurance is taken out.[8] A person who knowingly purchases a stolen motor vehicle, and even the thief him- or herself, has an insurable interest as to liability insurance with respect to the operation of the vehicle, since potential liability to third persons is in no way reduced by the fact that the vehicle was stolen.[9] However, while title to the vehicle is not a necessary element of an insurable interest, it may in itself give rise to such an interest where potential liability may be based upon legal title, such as where a state financial responsibility law requires a person, in whose name a motor vehicle is registered, to maintain liability insurance on that vehicle, the liabilities and penalties to which such person may be subject for failure to comply with the law will create such an interest.[10]

Under an "omnibus" coverage clause, the driver of an automobile operating it with the permission of the insured owner need not have an independent insurable interest in the automobile in order for such driver to become an additional insured under the clause and to be indemnified therein against liability for injury to others.[11]

Where a person stands in a position of potential liability with respect to the use of an automobile at the time that person acquires liability insurance pertaining to that automobile, but, due to a change in circumstance, subsequently finds him- or herself in such position that there is little or no expectancy that such liability might arise, such person's insurable interest has terminated and the policy becomes ineffective.[12]

Observation:

Because an insurable interest with respect to liability insurance is distinct from an insurable interest with respect to property damage, a person may have an interest in one respect but not the other. Thus, the fact that a person may have a sufficient financial interest in a vehicle to enable the person to obtain property damage insurance thereon, does not necessarily place such person in such a position of potential liability as to vest in the person an insurable interest as to liability insurance.[13]

Footnotes

1 Nationwide Mut. Ins. Co. v. Edwards, 67 N.C. App. 1, 312 S.E.2d 656 (1984); Allstate Ins. Co. v. Liberty Mut. Ins. Group, 868 P.2d 110 (Utah Ct. App. 1994).
As to what constitutes insurable interest for automobile insurance, see § 18.

2 Stigall v. Fourth Street Auto Co., Inc., 922 S.W.2d 752 (Ky. Ct. App. 1996).

3 Western Cas. & Sur. Co. v. Herman, 318 F.2d 50, 1 A.L.R.3d 1184 (8th Cir. 1963).
As to necessity of insurable interest for automobile insurance, see § 17.

4 DiGerolamo v. Liberty Mut. Ins. Co., 364 So. 2d 939 (La. 1978).
Though an insurable interest may be based on the insured's liability for the car's operation and use, an insured who placed a friend's car on his automobile liability policy to replace his own wrecked car, did not have insurable interest under the theory of negligent entrustment, where he not only did not own the car but also did not control it and was not responsible for its use; under such circumstances, the lack of an insurable

interest made the policy illegal. American Mut. Fire Ins. Co. v. Passmore, 275 S.C. 618, 274 S.E.2d 416 (1981).

5 Home Ins. Co. v. Randolph, 106 N.J. Super. 438, 256 A.2d 81 (Ch. Div. 1969).

6 Osborne v. Security Ins. Co., 155 Cal. App. 2d 201, 318 P.2d 94 (2d Dist. 1957); DiGerolamo v. Liberty Mut. Ins. Co., 364 So. 2d 939 (La. 1978).

7 Farmers Butter and Dairy Co-op. v. Farm Bureau Mut. Ins. Co., 196 N.W.2d 533 (Iowa 1972).

8 Rea v. Hardware Mut. Cas. Co., 15 N.C. App. 620, 190 S.E.2d 708 (1972).

9 Gulf Ins. Co. v. Winn, 545 S.W.2d 526 (Tex. Civ. App. San Antonio 1976), writ refused n.r.e., (Apr. 6, 1977).
As to an insurable interest in the purchaser of a stolen vehicle, generally, see §§ 19, 101.

10 Dugas v. Rogers, 285 So. 2d 876 (La. Ct. App. 1st Cir. 1973).

11 Maryland Cas. Co. v. American Family Ins. Group of Madison, Wis., 199 Kan. 373, 429 P.2d 931 (1967).
As to omnibus coverage clauses, generally, see §§ 220 to 234.

12 McKinney v. State Farm Mut. Auto. Ins. Co., 349 So. 2d 1091 (Ala. 1977).

13 Bendall v. Home Indem. Co., 286 Ala. 146, 238 So. 2d 177 (1970).

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7 Am. Jur. 2d Automobile Insurance I E Refs.

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Automobile Insurance

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I. In General

E. Insurance Required by Statute

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Automobiles 43, 251.13, 251.14, 251.19

West's Key Number Digest, Insurance 1851, 2645, 2646, 2697, 2736, 2737, 2772 to 2779(2), 2787, 2800, 2817 to 2825, 2828

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance

A.L.R. Index, Automobile Insurance

A.L.R. Index, No-Fault Insurance

A.L.R. Index, Underinsured Motorists

A.L.R. Index, Uninsured Motorists

West's A.L.R. Digest, Automobiles 43, 251.13, 251.14, 251.19

West's A.L.R. Digest, Insurance 1851, 2645, 2646, 2697, 2736, 2737, 2772 to 2779(2), 2787, 2800, 2817 to 2825, 2828

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7 Am. Jur. 2d Automobile Insurance § 21

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Automobile Insurance

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I. In General

E. Insurance Required by Statute

1. Overview of Compulsory Automobile Insurance Laws

§ 21. Types of compulsory automobile insurance required by state law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Automobiles 43
West's Key Number Digest, Insurance 2645, 2646, 2697, 2736, 2737, 2774 to 2779(2), 2819 to 2825

A.L.R. Library

Requirement that multicoverage umbrella insurance policy offer uninsured- or underinsured-motorist coverage equal to liability limits under umbrella provisions, 52 A.L.R.5th 451
"Excess" or "umbrella" insurance policy as providing coverage for accidents with uninsured or underinsured motorists, 2 A.L.R.5th 922

States generally require some sort of automobile insurance, whether it be under financial responsibility laws,[1] statutes pertaining to uninsured and underinsured motorists,[2] or no-fault or "personal injury protection" statutes.[3] State statutes may require minimum limits of liability insurance as a condition of operating a vehicle,[4] or require every owner of a motor vehicle registered or principally garaged in the state to maintain motor vehicle liability insurance coverage insuring against liability for bodily injury, death, and property damage.[5] Any insurer authorized to transact, or transacting, automobile or motor vehicle insurance business in a state which sells a policy providing automobile or motor vehicle liability insurance coverage in any other state may be statutorily required to include in each policy coverage to satisfy at least the state's statutory liability insurance requirements whenever the automobile or motor vehicle insured under the policy is used or operated in the state.[6] Statutes requiring motorists

to obtain automobile liability insurance and requiring all motor vehicles to have a minimum level of liability insurance prohibit insurance policy exclusions that result in failure to provide the minimum coverage required under the statutes.[7] In addition, compulsory liability insurance and omnibus coverage provisions in some states require that every motor vehicle in a state, with limited exceptions, must be covered by a policy with the minimum liability limits and that a motor vehicle liability policy provide coverage to the named insured (either the owner or operator) and any other person using the covered vehicle with the express or implied permission of the named insured.[8]

Observation:

Under statutes in some states, the requirements for a motor vehicle liability policy may be fulfilled by the policies of one or more insurance carriers which policies together meet such requirements.[9]

Some states are not compulsory insurance states, requiring neither residents nor nonresidents to have insurance to obtain a driver's license, secure vehicle registration, or to travel through the state, although, nonetheless, requiring certain limits of insurance coverage if an automobile liability or a motor vehicle liability policy is issued in the state with regard to uninsured and underinsurance motorist coverage.[10]

A provision in a compulsory insurance act requiring a nonresident whose car is registered in another state to have insurance with an insurer who can be served in the state and who complies with the requirements of the act does not constitute discrimination against nonresidents denying them equal protection of the law, since it merely puts nonresident owners upon an equal footing with resident owners.[11]

A statute that requires a vehicle owner to maintain insurance on a registered vehicle is a strict liability statute that does not require a showing of knowledge or intent for a violation.[12]

CUMULATIVE SUPPLEMENT

Cases:

Statute requiring motor vehicle owner or registrant to maintain security for payment of benefits under personal protection insurance (PIP) does not require an owner or a registrant of a motor vehicle to personally obtain no-fault insurance; rather, maintain means to keep in an existing state, and does not prescribe any particular manner by which a registrant or owner must keep no-fault insurance in an existing state; overruling *Barnes v. Farmers Ins. Exch.*, 308 Mich. App. 1, 862 N.W.2d 681. Mich. Comp. Laws Ann. §§ 500.3101(1), 500.3101(4) (2018). Dye by Siporin & Associates, Inc. v. Esurance Property & Casualty Insurance Company, 504 Mich. 167, 934 N.W.2d 674 (2019).

[END OF SUPPLEMENT]

Footnotes

1 §§ 25 to 29.

2 §§ 34 to 36.

3 §§ 30 to 33.

4 Nation v. State Farm Ins. Co., 1994 OK 54, 880 P.2d 877 (Okla. 1994).
As to proof of financial responsibility as a condition of granting a driver's license or a motor vehicle registration, generally, see Am. Jur. 2d, Automobiles and Highway Traffic § 171.

5 Oravsky v. Encompass Ins. Co., 804 F. Supp. 2d 228 (D.N.J. 2011).
As to termination of automobile insurance, including mandatory insurance, or insurance otherwise regulated by statute, see §§ 50 to 56.

6 Hamilton v. Government Employees Ins. Co., 283 N.J. Super. 424, 662 A.2d 568 (App. Div. 1995).

7 Fisher ex rel. McCartney v. State Farm Mut. Auto. Ins. Co., 2013 MT 208, 371 Mont. 147, 305 P.3d 861 (2013).
Under Alaska law, automobile insurers are not permitted to issue policies containing provisions that reduce the scope of coverage below the legal minimum. 21st Century Premier Ins. Co. v. Smith, 998 F. Supp. 2d 884 (D. Alaska 2014).

8 Niven v. Boston Old Colony Ins. Co., 646 So. 2d 1108 (La. Ct. App. 5th Cir. 1994), writ denied, 649 So. 2d 422 (La. 1995).
As to persons covered by automobile liability insurance policies, generally, and under omnibus clauses, see §§ 220 to 234.
As to requirements of financial security imposed on motor carriers of persons or goods, generally, see Am. Jur. 2d, Automobiles and Highway Traffic § 175.

9 Integral Ins. Co. v. Maersk Container Service Co., Inc., 206 Mich. App. 325, 520 N.W.2d 656 (1994).

10 Best v. Auto-Owners Ins. Co., 540 So. 2d 1381 (Ala. 1989).
It is not the law in Wisconsin that every vehicle designed for use on the public highways and subject to registration must be insured; however, if motor vehicle insurance is obtained for any vehicle, then the insurance is subject to certain restrictions found in the applicable state statute. Rea By and Through Wargo v. Transportation Ins. Co., 191 Wis. 2d 271, 528 N.W.2d 79 (Ct. App. 1995).
As to the obligation to provide uninsured and underinsured motorist coverage, generally, see §§ 41 to 44.

11 Bookbinder v. Hults, 19 Misc. 2d 1062, 192 N.Y.S.2d 331 (Sup 1959).
As to the validity of financial responsibility acts, generally, see Am. Jur. 2d, Automobiles and Highway Traffic §§ 176 to 178.

12 State Cent. Collection Unit v. Jordan, 405 Md. 420, 952 A.2d 266 (2008).

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7 Am. Jur. 2d Automobile Insurance § 22

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I. In General

E. Insurance Required by Statute

1. Overview of Compulsory Automobile Insurance Laws

§ 22. Purposes of compulsory automobile insurance law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Automobiles 43

The purpose of compulsory insurance law is to assure that motor vehicles have continuous liability insurance that is sufficient to satisfy tort liabilities from the maintenance or use of motor vehicles,[1] assuring that victims of automobile accidents have a guaranteed avenue of financial redress.[2] Compulsory liability insurance is principally designed to protect the public[3] from reckless and irresponsible drivers,[4] and to provide compensation to those who have been injured by automobiles,[5] or as a result of the negligent operation of motor vehicles,[6] rather than to protect the motor vehicle operator from loss,[7] through making vehicle registration conditional upon a showing by the registrant that he or she has liability insurance coverage on that vehicle.[8]

In essence, a state's compulsory motor vehicle insurance law is designed to ensure that those who own and operate motor vehicles registered in the state are financially able to pay compensation for damages resulting from motor vehicle accidents.[9] Compulsory insurance statutes are intended to assure, so far as possible, that there will be no certificate of registration outstanding without concurrent and continuous liability insurance coverage.[10]

CUMULATIVE SUPPLEMENT

Cases:

Statute requiring automobile liability insurance policy to provide minimum medical and hospital benefits did not require policy to cover difference between amount billed by providers and amount the providers agreed to accept from insurer. Ark. Code Ann. § 23-89-202. Crockett v. Shelter Mutual Insurance Company, 2019 Ark. 365, 589 S.W.3d 369 (2019).

[END OF SUPPLEMENT]

Footnotes

1 Simmons v. Briones, 133 Nev. 9, 390 P.3d 641 (2017).

2 Montgomery County v. Distel, 436 Md. 226, 81 A.3d 397 (2013).

3 Goldstein v. Grinnell Select Ins. Co., 2016 IL App (1st) 140317, 405 Ill. Dec. 518, 58 N.E.3d 779 (App. Ct. 1st Dist. 2016), appeal denied, 406 Ill. Dec. 321, 60 N.E.3d 872 (Ill. 2016); State Farm Mut. Auto. Ins. Co. v. Colby, 194 Vt. 532, 2013 VT 80, 82 A.3d 1174 (2013).

4 Safeway Ins. Co. of Louisiana v. Gardner, 191 So. 3d 684 (La. Ct. App. 5th Cir. 2016); State v. Sullivan, 201 N.C. App. 540, 687 S.E.2d 504 (2009).

5 McGrew v. Stone, 998 S.W.2d 5 (Ky. 1999); Payne v. Erie Ins. Exchange, 442 Md. 384, 112 A.3d 485 (2015).

6 Boniey v. Kuchinski, 223 W. Va. 486, 677 S.E.2d 922 (2009).

7 Bornbaum v. Employers Liability Assur. Co., 311 Mass. 282, 41 N.E.2d 54 (1942).

8 Blakley v. M&N Dealerships, L.L.C., 2016 OK CIV APP 41, 376 P.3d 917 (Div. 3 2015) (production of proof of compulsory liability insurance to a motor license agent is part of the statutory vehicle registration process required of the owner).
As to the purposes of state motor vehicle financial responsibility laws, see § 26.
As to the purposes of state no-fault automobile insurance statutes, see § 30.

9 Payne v. Erie Ins. Exchange, 442 Md. 384, 112 A.3d 485 (2015).

10 Teeter v. Allstate Ins. Co., 9 A.D.2d 176, 192 N.Y.S.2d 610 (4th Dep't 1959), judgment aff'd, 9 N.Y.2d 655, 212 N.Y.S.2d 71, 173 N.E.2d 47 (1961).

7 Am. Jur. 2d Automobile Insurance § 23

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I. In General

E. Insurance Required by Statute

1. Overview of Compulsory Automobile Insurance Laws

§ 23. Construction of compulsory automobile insurance laws

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2645, 2646

A compulsory motor vehicle insurance act is a remedial statute and will be broadly construed to carry out its beneficent purpose[1] of providing compensation to those who have been injured by automobiles.[2] The purpose of a statute governing required and permissible provisions in automobile insurance policies is to assure insurance coverage to the accident victims, and it must be broadly construed so as to increase rather than limit coverage.[3] Well-settled principles covering the interpretation of an ordinary policy of insurance will be disregarded in determining the scope and extent of a compulsory motor vehicle policy where necessary to accomplish the legislative aim.[4] Thus, a liability policy which expressly states that it was issued to meet a statute requiring motor vehicle liability insurance must be construed in connection with such statute and the public policy embodied therein, and principles applicable to cases involving ordinary policies are not controlling.[5]

Where the language of a statute requiring the inclusion of prescribed coverage in an automobile insurance policy is clear, it is controlling with regard to construction of a policy issued under that statute.[6] Thus, where the construction urged by the insurer would be in violation of statutory requirements, the language of the policy will be interpreted to conform with the law.[7] Any policy language which conflicts with the regulation setting certain minimum standards which automobile insurers must include in their policies or is less generous to the insured is unenforceable and superseded by the regulation.[8] Because exclusions in automobile insurance policies which are not contemplated or authorized by statute are contrary to public policy, they are deemed inapplicable and disregarded, and the policy is enforced as if it were in express compliance with the statutory requirements.[9] Restrictions, exclusions, or clauses that excuse or reduce benefits below the minimum statutorily required levels or types of automobile insurance, and are not expressly authorized, are invalid, as are any clauses that are against public policy.[10]

In interpreting a compulsory insurance statute, to determine whether an insurance policy issued for the purpose of satisfying the requirements of that statute conforms to such requirements, it is proper to take the object of the statute into account.[11] The focus on deciding an issue of insurance coverage of a vehicle must begin and end with the mandatory insurance provisions of the law applicable to all motor vehicles owned and operated in the state.[12]

The definition of the motor vehicles covered in an automobile liability insurance policy required by statute is to be construed with reference to statutes with which it was intended to comply, and with which the state commissioner or superintendent of insurance must have believed it complied when presumably he approved its form or allowed its use under the statute.[13] A court interprets the words of the standard automobile insurance policy in light of their plain meaning, giving full effect to the document as a whole, considering what an objectively reasonable insured, reading the relevant policy language, would expect to be covered and interpreting the provision of the standard policy in a manner consistent with the statutory and regulatory scheme that governs such policies.[14]

Footnotes

1 Moore v. Hartford Fire Ins. Co. Group, 270 N.C. 532, 155 S.E.2d 128 (1967).
As to the construction of state motor vehicle financial responsibility laws, see §§ 27, 28.
As to the construction of no-fault automobile insurance statutes, see § 31.

2 Johnson v. State Farm Mutual Automobile Insurance Company, Inc., 2014 COA 135, 2014 WL 5033217 (Colo. App. 2014), certiorari granted in part, 2015 WL 4999287 (Colo. 2015).
As to purposes of compulsory insurance, see § 22.

3 Stone v. Acuity, 2008 WI 30, 308 Wis. 2d 558, 747 N.W.2d 149 (2008).

4 Desmarais v. Standard Acc. Ins. Co., 331 Mass. 199, 118 N.E.2d 86 (1954).

5 Wheeler v. O'Connell, 297 Mass. 549, 9 N.E.2d 544, 111 A.L.R. 1038 (1937).

6 Fidelity & Cas. Co. of New York v. Baldwin, 514 F.2d 111 (6th Cir. 1975).
Automobile liability insurance issued in New York to a New York resident covering a motor vehicle registered and garaged in that state was not required to afford coverage to the level of the New Jersey statutory minimum when the accident occurred in New Jersey injuring that state's resident; the reformation of the New York policy containing limits of $10,000 per person and $20,000 per accident, in compliance with New York law to provide coverage in the amount of $15,000 per person and $30,000 per accident, as mandated by New Jersey law, was error. American Hardware Mut. Ins. Co. v. Bradley, 153 N.J. Super. 72, 379 A.2d 53 (App. Div. 1977).

7 American Tours, Inc. v. Liberty Mut. Ins. Co., 68 N.C. App. 668, 316 S.E.2d 105 (1984), decision aff'd, 315 N.C. 341, 338 S.E.2d 92, 60 A.L.R.4th 771 (1986).

8 Liberty Mut. Fire Ins. Co. v. National Cas. Co., 90 A.D.3d 859, 935 N.Y.S.2d 319 (2d Dep't 2011).

9 Nation v. State Farm Ins. Co., 1994 OK 54, 880 P.2d 877 (Okla. 1994).
As to household exclusions in automobile insurance policies, generally, see § 245.
As to automobile insurance provisions pertaining to “business” or “commercial” use, generally, see §§ 255 to 282.
As to liability insurance coverage for garages, service or repair stations, rental agencies, and automobile dealers, generally, see §§ 174 to 186.

10 Montgomery County v. Distel, 436 Md. 226, 81 A.3d 397 (2013).

11 Thomas v. National Auto. and Cas. Ins. Co., 1994 OK 52, 875 P.2d 424 (Okla. 1994).

12 Walker v. Hebert, 155 So. 3d 114 (La. Ct. App. 3d Cir. 2014), writ denied, 169 So. 3d 355 (La. 2015).

13 Kenner v. Century Indem. Co., 320 Mass. 6, 67 N.E.2d 769, 165 A.L.R. 1463 (1946).
As to vehicles covered by automobile liability insurance policies, generally, see §§ 187 to 215.

14 Golchin v. Liberty Mut. Ins. Co., 460 Mass. 222, 950 N.E.2d 853 (2011).

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7 Am. Jur. 2d Automobile Insurance § 24

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I. In General

E. Insurance Required by Statute

1. Overview of Compulsory Automobile Insurance Laws

§ 24. Assigned risk or claims plans and compulsory automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2646

Forms

Forms relating to assigned risk or claims plains, see Am. Jur. Legal Forms 2d, Automobile Insurance [Westlaw®(r) Search Query]

Some states with compulsory automobile insurance statutes have included provisions to assure the availability of such insurance to persons required to obtain it, but who otherwise might be unable to do so, under "assigned risk" plans, which provide that the state's liability insurance carriers are required to accept and insure individuals who qualify under the plan but who are unable to otherwise voluntarily procure liability coverage, and equitably apportions such high risk applicants among the insurers.[1] Statutory assigned claims plans generally provide benefits for those individuals injured in a motor vehicle-related accident who, through no-fault of their own, have no other available source of insurance coverage.[2] In a state where a person must generally seek personal protection insurance benefits from his or her own insurer, if no insurance is available, the person may obtain benefits through the Assigned Claims Plan, which serves as the insurer of last priority.[3] In some jurisdictions, the rules of the state assigned risk plan governs the rights and liabilities of parties entering into assigned risk contracts.[4]

Observation:

In some jurisdictions, where an insurer involuntarily undertakes to insure an assigned risk, the broker who produces the business that is assigned to the insurer does not become an agent of the insurer for the purpose of writing additional business for the assigned risk by the insurer, and the broker does not speak for the insurer in its relationship with the assigned risk.[5]

In some jurisdictions, upon acceptance of a policy change request form by a "producer"—as an associated group of underwriters are known under a State Automobile Insurance Placement Facility scheme, which operates as part of the state's no-fault insurance scheme—the insured is given a certificate that similarly operates as proof of insurance.[6] However, in another jurisdiction, where an applicant was told by an agent that the application for coverage was accepted, and the applicant was not informed by the assigned insurer until three months later that it was rejecting her application on the ground that it did not meet plan requirements, the applicant was not covered for an accident that occurred after the acceptance and before the rejection of the application, since the insurer was not required to accept defective applications, and there was unrebutted evidence that the agent who took the application was not the insurer's agent.[7]

Observation:

Amendments to a state's motor vehicle financial responsibility law which, in pertinent part, rendered uninsured and underinsured coverage optional, did not eliminate the obligation of that state's assigned claims plan to pay benefits to persons otherwise eligible who were injured while driving or occupying an uninsured vehicle.[8]

Footnotes

1 Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961).
The California Automobile Assigned Risk Plan, which provides insurance to motorists who are bad risks, does not create a procedure requiring any driver who happens to be insured under the Plan, and is involved in a dispute arising out of a claim for policy benefits, to exhaust administrative remedies, by first appealing to the Plan's administrative committee and then to the State Insurance Commissioner, since a Plan remedy has no application to such disputes; the Plan's committee only has jurisdiction over matters such as the issuance of an assigned risk policy, the setting of rates for purchase of such policies and the manner by which risks are assigned to insurers. Hightower v. Farmers Ins. Exchange, 38 Cal. App. 4th 853, 45 Cal. Rptr. 2d 348 (2d Dist. 1995).

2 Pennsylvania Financial Responsibility Assigned Claims Plan v. English, 541 Pa. 424, 664 A.2d 84 (1995).
As to statutorily required uninsured and underinsured motorist coverage, generally, see §§ 34 to 36.

3 Titan Ins. Co. v. American Country Ins. Co., 312 Mich. App. 291, 876 N.W.2d 853 (2015), appeal denied, 499 Mich. 944, 879 N.W.2d 258 (2016).

4 Fogarty v. Boston Old Colony Ins. Co., 222 A.D.2d 484, 635 N.Y.S.2d 647 (2d Dep't 1995).

5 Pearson v. Selected Risks Ins. Co., 154 N.J. Super. 240, 381 A.2d 91 (Law Div. 1977).
As to insurance agents and brokers, generally, see Am. Jur. 2d, Insurance §§ 109 to 119.

6 Jackson v. Transamerica Ins. Corp. of America, 207 Mich. App. 460, 526 N.W.2d 31 (1994).
As to automobile insurance binders, generally, see §§ 10 to 16.

7 Harrison v. American Liberty Ins. Co., 155 Ga. App. 226, 270 S.E.2d 389 (1980).

8 Pennsylvania Financial Responsibility Assigned Claims Plan v. English, 541 Pa. 424, 664 A.2d 84 (1995).

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7 Am. Jur. 2d Automobile Insurance § 25

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I. In General

E. Insurance Required by Statute

2. Financial Responsibility Laws

§ 25. Nature of motor vehicle financial responsibility laws

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2737

Many states have enacted statutes, known as financial responsibility laws, which are intended to discourage careless driving or to mitigate its consequences by making proof of financial responsibility a condition of the granting of a driver's license or certificate of registration.[1] A motor vehicle financial responsibility law is, for all practical purposes, a compulsory insurance law.[2] Financial responsibility statutes focus on automobile insurance coverage which must run with the vehicle, as it requires that the policy designate by explicit description or by appropriate reference all motor vehicles covered, and then requires specific coverage for the named insured or other persons using such motor vehicle or motor vehicles for damages arising out of the ownership, maintenance, or use of such motor vehicles.[3] This requirement may be satisfied in some states by the obtaining of certain liability insurance, or, in the alternative, by establishing other specified proof of financial security.[4] As a result, a state financial responsibility act's requirement compelling motorists to demonstrate their ability to respond in damages for liability, is fulfilled by the overwhelming majority of motorists by purchasing liability insurance.[5] Some jurisdictions squarely place the duty to obtain liability insurance coverage on a vehicle directly on the owner of the vehicle, who may not delegate the responsibility to the vehicle's operator.[6]

Observation:

In some jurisdictions, motor vehicle financial responsibility laws have been repealed and replaced by state no-fault motor vehicle insurance acts.[7] Conversely, some states have repealed no-fault acts and replaced them with motor vehicle financial responsibility acts.[8]

State motor vehicle financial responsibility laws sometimes provide general guidelines for the contents of automobile liability insurance policies,[9] or may require specified coverage,[10] or contain provisions as to other matters pertaining to automobile insurance coverage, claims, or payment.[11] In order to fulfill its purposes, a motor vehicle financial responsibility law establishes a recovery scheme that sets out minimum amounts of coverage that must be offered to the insured.[12] However, the method by which an injured party obtains coverage is limited to the clear and unambiguous terms of the insurance policy,[13] and the extent of coverage regarding an automobile accident is determined by the applicable state financial responsibility act.[14] Such laws may require each automobile owner to carry a minimum amount of liability insurance providing coverage for the named insured as well as any other person using the automobile with the express or implied permission of the named insured.[15]

Distinction:

A distinction is made in some states between financial responsibility laws and uninsured motorist statutes, such acts having, in some instances, been enacted at different times to protect different interests.[16] Statutes requiring uninsured motorists to provide security deposits following a motor vehicle accident and penalizing any failure to do so operate as a financial responsibility law; the purpose of such a law is not to mandate continuous liability insurance, but rather to ensure financial coverage for any damages for injuries incurred in past and future accidents, or in other words, to create leverage when uninsured drivers are involved in accidents.[17] Thus, in some states a person may comply with a financial responsibility law by providing proof that the person is able to respond in damages for liability caused through the ownership of the motor vehicle in the statutory amount,[18] while the purpose of the state's uninsured motorist coverage is to put the injured party in the place they would have been if the other person had complied with the financial responsibility law.[19] However, other jurisdictions have their provisions for uninsured and underinsured motorist coverage contained within the state's motor vehicle financial responsibility act.[20]

Even where a provision of a state motor vehicle safety and financial responsibility act requires each automobile owner to carry a minimum amount of liability insurance, such a statute has been considered satisfied if the terms of the policy excludes coverage in the event the driver of a vehicle is covered under some other policy for the minimum amount of liability coverage required by law.[21]

Footnotes

1 Am. Jur. 2d, Automobiles and Highway Traffic § 168.

2 Hong Lu v. Automobile Club Inter-Insurance Exchange, 2016 WL 6882888 (Mo. Ct. App. E.D. 2016), reh'g and/or transfer denied, (Jan. 10, 2017) and transfer denied, (Feb. 28, 2017).
As to types of and purposes for compulsory automobile insurance, see §§ 21, 22.

3 Grinnell Mut. Reinsurance Co. v. Farm & City Ins. Co., 2000 ND 163, 616 N.W.2d 353 (N.D. 2000); Hechimovich v. Acuity, 2014 WI App 14, 352 Wis. 2d 513, 842 N.W.2d 493 (Ct. App. 2013).

4 Garrett v. New Hampshire Ins. Co., 860 F. Supp. 2d 1203 (D. Or. 2012).
As to proof of financial responsibility as a condition of granting a driver's license or a motor vehicle registration, generally, see Am. Jur. 2d, Automobiles and Highway Traffic § 171.

5 Norman v. King, 163 Vt. 612, 659 A.2d 1123 (1995).

6 Li v. Enterprise Rent-A-Car Co. of Utah, 2006 UT 80, 150 P.3d 471 (Utah 2006).
The statute which mandates liability insurance coverage imposes a nondelegable duty on the owner or operator of a registered and nonexempt vehicle to maintain that coverage. Pollard v. Chrysler Credit Corp., 1991 OK CIV APP 107, 819 P.2d 719 (Ct. App. Div. 1 1991).

7 Windrim v. Nationwide Ins. Co., 537 Pa. 129, 641 A.2d 1154 (1994).

8 As to nature and purposes of no-fault motor vehicle insurance laws, see § 30.

9 Rader v. Johnson, 910 S.W.2d 280 (Mo. Ct. App. W.D. 1995).

10 Lyons v. Direct General Ins. Co. of Mississippi, 138 So. 3d 930 (Miss. Ct. App. 2012), judgment aff'd, 138 So. 3d 887 (Miss. 2014); Collins v. Farmers Ins. Co. of Oregon, 312 Or. 337, 822 P.2d 1146 (1991).
The Missouri Motor Vehicle Financial Responsibility Law does not require an owner to have liability insurance covering the use of the automobile by a driver who does not have permission, and a policy excluding coverage of a driver who does not have permission is not against public policy. State Farm Fire & Cas. Co. v. Ricks, 902 S.W.2d 323 (Mo. Ct. App. E.D. 1995).

11 Terminato v. Pennsylvania Nat. Ins. Co., 538 Pa. 60, 645 A.2d 1287 (1994).
As to actions against automobile insurers, generally, see §§ 556 to 565.

12 Citizens United Reciprocal Exchange v. Perez, 223 N.J. 143, 121 A.3d 374 (2015).
As to the purposes of motor vehicle financial responsibility laws, see § 26.

13 Nationwide Mut. Ins. Co. v. Cummings, 438 Pa. Super. 586, 652 A.2d 1338 (1994).

14 As to risks and harms covered and excepted, generally, see § 87.

15 Lyons v. Direct General Ins. Co. of Mississippi, 138 So. 3d 930 (Miss. Ct. App. 2012), judgment aff'd, 138 So. 3d 887 (Miss. 2014); Integon Indem. Corp. v. Universal Underwriters Ins. Co., 342 N.C. 166, 463 S.E.2d 389 (1995).
As to risks and coverage of automobile insurance, generally, see §§ 87 to 98.

16 Farmers Ins. Co. of Arizona v. U.S. Fidelity and Guar. Co., 185 Ariz. 125, 912 P.2d 1354 (Ct. App. Div. 2 1995).

17 Simmons v. Briones, 133 Nev. 9, 390 P.3d 641 (2017).

18 City of Gary v. Allstate Ins. Co., 612 N.E.2d 115 (Ind. 1993).

19 As to nature and purposes of uninsured and underinsured motorist coverage, see §§ 34 to 36.

20 Vasseur v. St. Paul Mut. Ins. Co., 123 N.C. App. 418, 473 S.E.2d 15 (1996).

21 Integon Indem. Corp. v. Universal Underwriters Ins. Co., 342 N.C. 166, 463 S.E.2d 389 (1995).

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7 Am. Jur. 2d Automobile Insurance § 26

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I. In General

E. Insurance Required by Statute

2. Financial Responsibility Laws

§ 26. Purposes of motor vehicle financial responsibility laws

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2737

The purposes of financial responsibility acts generally are to protect the public,[1] provide compensation for innocent victims who may be injured by financially irresponsible motorists,[2] and protect innocent persons injured by the negligence of motorists on the roads and highways.[3] The thrust of these acts is to encourage motorists to procure and maintain automobile liability insurance so that victims of "motor vehicle accidents" will have a reliable source from which to seek compensation for their injuries[4] and secure payment of their damages.[5] Also, some state legislatures enact motor vehicle financial responsibility laws primarily to address the spiraling costs of automobile insurance and the resultant increase in the number of uninsured motorists driving on public highways,[6] by inducing the purchase of liability insurance by a very high percentage of motorists.[7]

Footnotes

1 Nelson v. Artley, 2015 IL 118058, 396 Ill. Dec. 374, 40 N.E.3d 27 (Ill. 2015).

2 Safeway Ins. Co. of Louisiana v. Gardner, 191 So. 3d 684 (La. Ct. App. 5th Cir. 2016); Connecticut Indem. Co. v. Podeszwa, 392 N.J. Super. 480, 921 A.2d 458 (App. Div. 2007).

3 Affirmative Ins. Co. v. Broeker, 412 S.W.3d 314 (Mo. Ct. App. E.D. 2013); Martin v. Powers, 505 S.W.3d 512 (Tenn. 2016).

4 City of Gary v. Allstate Ins. Co., 612 N.E.2d 115 (Ind. 1993).

5 Goldstein v. Grinnell Select Ins. Co., 2016 IL App (1st) 140317, 405 Ill. Dec. 518, 58 N.E.3d 779 (App. Ct. 1st Dist. 2016), appeal denied, 406 Ill. Dec. 321, 60 N.E.3d 872 (Ill. 2016); Perry v. Asphalt & Concrete Services, Inc., 447 Md. 31, 133 A.3d 1143 (2016).
As to nature of motor vehicle financial responsibility laws, see § 25.

6 Grondecki v. Axiom Management, Inc., 158 F. Supp. 3d 345 (E.D. Pa. 2016), appeal dismissed, (3rd Circ. 16-1426) (May 24, 2016).

7 Evans v. American Home Assur. Co., 252 S.C. 417, 166 S.E.2d 811 (1969).

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I. In General

E. Insurance Required by Statute

2. Financial Responsibility Laws

§ 27. Construction and effect of motor vehicle financial responsibility laws

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2737

Motor vehicle financial responsibility laws are remedial statutes[1] which must be liberally construed to effectuate their purposes.[2] Thus, as the purpose of such laws is to protect innocent victims who may be injured by financially irresponsible motorists,[3] some courts consider this purpose best served when the applicable statutes are interpreted to provide the innocent victim with the fullest possible protection.[4] In addition, financial responsibility laws are deemed declaratory of public policy in and of themselves, and such public policy supersedes any rule of public policy applicable to ordinary insurance law in cases concerning the financial responsibility laws.[5]

Parties are free to contract as to the terms of an automobile insurance policy, but only to the extent that the contract complies with the motor vehicle financial responsibility law.[6] When the terms of an insurance policy conflict with a state motor vehicle financial responsibility law, the provisions of the statute will prevail.[7] Indeed, the provisions of state motor vehicle financial responsibility laws are generally written into every automobile insurance policy in the applicable state as a matter of law,[8] as well as the security under self-insured programs.[9] To effectuate the purpose of the motor vehicle financial responsibility law, it supplements every insurance policy even if the express terms of the policy do not provide coverage,[10] and the specific provisions of the statute integrated into an insurance contract require that the insurance contract be interpreted and given effect in accordance with the intention of the legislature.[11] In addition, mandatory insurance coverage requirements in a state financial responsibility act take precedence over any contrary or restrictive language in automobile liability insurance policies,[12] so that where a state motor vehicle financial responsibility act requires that a motor vehicle liability policy provide specified coverage,

exclusions or conditions which dilute that coverage are void[13] and of no effect.[14] As this legislation requires insurance for the benefit of the public, an insurer may not nullify its purposes by engrafting exceptions from liability as to uses that the evident purpose of the legislation is to cover.[15] Even where the motor vehicle financial responsibility law and an automobile insurance policy are not in direct conflict, the policy is interpreted and construed in light of the provisions of the act, and policy provisions will not be given effect if they are contrary to the legislative intent.[16] However, an insurance clause violates public policy and is rendered unenforceable only to the extent it violates the motor vehicle financial responsibility law.[17]

Where the term "motor vehicle" is defined in a financial responsibility law, similar terms in liability insurance policies must be construed in the light of this definition.[18]

An automobile rental company may not enforce an indemnification agreement for amounts up to minimum insurance coverage amounts it is required to provide under the Vehicle and Traffic Law; however, an indemnification clause, if otherwise valid, is enforceable for amounts exceeding the statutory minimum liability requirements.[19]

Footnotes

1 Vasseur v. St. Paul Mut. Ins. Co., 123 N.C. App. 418, 473 S.E.2d 15 (1996).
As to nature of motor vehicle financial responsibility laws, see § 25.
As to the validity of financial responsibility acts, generally, see Am. Jur. 2d, Automobiles and Highway Traffic § 169.

2 Willisch v. Nationwide Ins. Co. of America, 852 F. Supp. 2d 582 (E.D. Pa. 2012).

3 § 26.

4 Freeth v. Zurich American Ins. Co., 152 F. Supp. 3d 420 (E.D. Pa. 2015), judgment aff'd, 645 Fed. Appx. 169 (3d Cir. 2016).

5 State Farm Mut. Auto. Ins. Co. v. Foster, 585 Pa. 529, 889 A.2d 78 (2005).

6 Hong Lu v. Automobile Club Inter-Insurance Exchange, 2016 WL 6882888 (Mo. Ct. App. E.D. 2016), reh'g and/or transfer denied, (Jan. 10, 2017) and transfer denied, (Feb. 28, 2017).
As to scope of effect and persons required to comply, see § 28.
As to coverage not required by law, see § 29.

7 Maryland Cas. Co. v. Smith, 117 N.C. App. 593, 452 S.E.2d 318 (1995).

8 Melendez v. Hallmark Ins. Co., 232 Ariz. 327, 305 P.3d 392 (Ct. App. Div. 1 2013), as amended, (June 11, 2013) and redesignated a memorandum decision, (Aug. 27, 2013); Dutton v. American Family Mutual Insurance Company, 454 S.W.3d 319 (Mo. 2015).

9 Northern Indiana Public Service Co. v. Bloom, 847 N.E.2d 175 (Ind. 2006).

10 Dutton v. American Family Mutual Insurance Company, 454 S.W.3d 319 (Mo. 2015).

11 Saffore v. Atlantic Cas. Ins. Co., 21 N.J. 300, 121 A.2d 543 (1956).

12 Miller v. Lambert, 195 W. Va. 63, 464 S.E.2d 582 (1995).

13 Pennsylvania Nat. Mut. Cas. Ins. Co. v. Parker, 282 S.C. 546, 320 S.E.2d 458 (Ct. App. 1984).

14 Transportation Ins. Co. v. Martinez, 183 Ariz. 33, 899 P.2d 194 (Ct. App. Div. 1 1995).

15 Angelotta v. Security Nat. Ins. Co., 117 So. 3d 1214 (Fla. 5th DCA 2013); Williams v. Government Employees Ins. Co. (GEICO), 409 S.C. 586, 762 S.E.2d 705 (2014).

16 Hibdon v. Casualty Corp. of America, Inc., 1972 OK CIV APP 3, 504 P.2d 878 (Ct. App. Div. 2 1972).

17 Hong Lu v. Automobile Club Inter-Insurance Exchange, 2016 WL 6882888 (Mo. Ct. App. E.D. 2016), reh'g and/or transfer denied, (Jan. 10, 2017) and transfer denied, (Feb. 28, 2017).

18 American Mut. Liability Ins. Co. v. Chaput, 95 N.H. 200, 60 A.2d 118 (1948).
As to what specifically constitutes a "motor vehicle" for purposes of automobile insurance liability coverage, generally, and under state motor vehicle financial responsibility laws, see § 191.

19 ELRAC, Inc. v. Masara, 96 N.Y.2d 847, 729 N.Y.S.2d 60, 753 N.E.2d 855 (2001).

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7 Am. Jur. 2d Automobile Insurance § 28

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I. In General

E. Insurance Required by Statute

2. Financial Responsibility Laws

§ 28. Construction and effect of motor vehicle financial responsibility laws—Scope of effect; persons required to comply

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2737

Even in a state referred to as a compulsory financial responsibility state, a victim is not guaranteed compensation in every automobile accident[1] and a third party's right to recover through liability insurance is not absolute.[2] For example, financial responsibility laws may require car owners to purchase liability insurance for injuries sustained by others, but may not require such insurance for personal injury sustained by the owner itself,[3] which may be required by state no-fault insurance statutes.[4] Furthermore, some states' motor vehicle financial responsibility acts require self-insurers to pay benefits as would an insurer on behalf of permissive users of its vehicles who injure third parties,[5] but financial responsibility acts in other states are not applicable to self-insurers.[6] Also, some state motor vehicle safety responsibility laws contain exemptions for motor vehicles owned by the state or any of its political subdivisions.[7]

A motor vehicle financial responsibility law applies only to insurance policies delivered or issued for delivery in the state, with respect to any motor vehicle registered or principally garaged in that state.[8] An automobile policy was required to provide liability coverage for any person using an insured motor vehicle with the express or implied permission of the named insured; the statutory definition of "financial liability coverage" to include permissive users became part of the policy and the definition of "insured."[9]

Footnotes

1 Classified Ins. Co., Inc. v. Budget Rent-a-Car of Wisconsin, Inc., 186 Wis. 2d 478, 521 N.W.2d 177 (Ct. App. 1994).
As to construction and effect of motor vehicle financial responsibility laws, see § 27.
As to risks and harms covered and excepted under automobile insurance policies, generally, see §§ 87 to 98.

2 Founders Ins. Co. v. May, 44 N.E.3d 56 (Ind. Ct. App. 2015).

3 Jones v. State Farm Mut. Auto. Ins. Co., 635 N.E.2d 200 (Ind. Ct. App. 1994).

4 As to no-fault insurance and personal injury protection laws, see §§ 30 to 33.

5 Chambers v. Agency Rent-A-Car, Inc., 878 P.2d 1164 (Utah Ct. App. 1994).

6 Cordova v. Wolfel, 1995-NMSC-061, 120 N.M. 557, 903 P.2d 1390 (1995).

7 Tatney v. City of Deridder, 206 So. 3d 1207 (La. Ct. App. 3d Cir. 2016); Dotts v. Taressa J.A., 182 W. Va. 586, 390 S.E.2d 568 (1990).

8 Peters v. National Interstate Ins. Co., 2014 PA Super 276, 108 A.3d 38 (2014), appeal denied, 124 A.3d 309 (Pa. 2015).

9 Lee v. Grinnell Mut. Reinsurance Co., 646 N.W.2d 403 (Iowa 2002).

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I. In General

E. Insurance Required by Statute

2. Financial Responsibility Laws

§ 29. Construction and effect of motor vehicle financial responsibility laws—Coverage not required by law

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2737

Whether an automobile liability policy or combination of policies was "purchased to satisfy the owner's or operator's security requirement," for purposes of a statute establishing required components for such policies, hinges not on whether it actually satisfies the statutory security requirement, but rather whether it was purchased for that purpose.[1]

Although an insurance policy issued pursuant to a financial responsibility law must comply with that law as to required provisions,[2] terms of coverage not required by that law are not affected.[3] In addition, a motor vehicle financial responsibility law does not prevent an insurer from providing coverage in excess of or broader than that which is mandatory under such law,[4] and any added or excess coverage not required does not have to comply with the requirements of the financial responsibility law.[5] Furthermore, an insurer and insured may limit the coverage provided under some parts of the policy to the statutory minimum required by the financial responsibility law, while having a higher limit of liability apply under other parts of the policy.[6]

Practice Tip:

While defenses provided to insurers under general insurance statutes may not be available to insurers issuing automobile liability policies pursuant to a motor vehicle safety and financial responsibility act insofar as the statutory minimum amount of coverage is concerned, the defenses may be available as to any coverage in excess of the statutory minimum required by statute.[7]

Not all insurance policies that afford coverage for liability arising out of the operation or use of automobiles are considered motor vehicle liability policies; specifically, excess or umbrella policies are not subject to the requirements of the motor vehicle financial responsibility law.[8]

Footnotes

1 Arredondo v. Avis Rent A Car System, Inc., 2001 UT 29, 24 P.3d 928 (Utah 2001).

2 As to construction and effect of motor vehicle financial responsibility laws, see § 27.

3 Pesqueria v. Factory Mut. Liability Ins. Co. of America, 16 Ariz. App. 407, 493 P.2d 1212 (Div. 2 1972); Mendota Insurance Company v. Lawson, 456 S.W.3d 898 (Mo. Ct. App. W.D. 2015).

4 Hix v. Hertz Corp., 307 Ga. App. 369, 705 S.E.2d 219 (2010).

5 State Farm Mut. Auto. Ins. Co. v. Scheel, 973 S.W.2d 560 (Mo. Ct. App. W.D. 1998).

6 Graves v. Traders & General Ins. Co., 252 La. 709, 214 So. 2d 116 (1968).

7 Odum v. Nationwide Mut. Ins. Co., 101 N.C. App. 627, 401 S.E.2d 87 (1991).

8 Northern Ins. Co. of New York v. Dottery, 43 F. Supp. 2d 509 (E.D. Pa. 1998).

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I. In General

E. Insurance Required by Statute

3. No-Fault Insurance; Personal Injury Protection (PIP)

§ 30. Nature and purposes of automobile no-fault insurance and personal injury protection

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2817 to 2820, 2828

The no-fault automobile insurance system is designed to ensure that persons injured in motor vehicle accidents are compensated promptly for their injuries and financial losses.[1] No-fault statutes do not codify common-law principles; rather, they create new and independent statutory rights and obligations in order to provide a more efficient means for adjusting financial responsibilities arising out of automobile accidents.[2] No-fault laws were created to remedy the long recognized and serious problem of the tort system's inability to rapidly, adequately, and fairly compensate victims of automobile accidents,[3] and are designed to remedy the long delays, inequitable payment structure, and the high legal costs in the tort system.[4] No-fault insurance seeks to guarantee every person insurance coverage on a fair and equitable basis.[5]

No-fault coverage, sometimes referred to as personal injury protection,[6] is primary coverage.[7] In some jurisdictions, personal injury protection insurance is a statutorily required coverage to comply with the state's no-fault law and is an integral part of the no-fault statutory scheme.[8]

The legislative intent behind personal injury protection (PIP) benefits is to ensure the broadest coverage possible so long as an automobile was involved in that which happened.[9] The primary purpose of a statute requiring motor vehicle liability insurers to provide personal injury protection coverage is to assure financial compensation to victims of motor vehicle accidents without regard to the fault of a named insured or other persons entitled to PIP benefits.[10] Another principal purpose of such legislation is the reduction of liability insurance premium rates for motor vehicle owners.[11]

Some no-fault acts seek to eliminate litigation between insurers to recover payments for medical expenses based on the common-law right of subrogation,[12] with the intention of providing substantial savings to insurers and the public.[13] No-fault acts have transferred victim compensation from a fault-based common-law tort recovery to a compulsory no-fault insurance fund.[14] In addition, by requiring all owners of motor vehicles to carry no-fault insurance,[15] and payments to be made immediately on accrual of loss, eliminating a determination of liability based on fault as a requirement for recovering certain,[16] no-fault statutes are intended to remove the bulk of motor vehicle accidents from the constraints of the tort system, and thus provide direct and rapid compensation to automobile accident victims through an insurance fund without regard to fault.[17]

Some no-fault systems allow for full compensation for economic losses up to a specified amount without the necessity of recourse to the courts, and simultaneously eliminate recovery for noneconomic losses in relatively minor cases.[18] A provision of a no-fault law may require insurers to compensate accident victims for basic economic loss,[19] which may consist of medical benefits, loss of earnings, and other reasonable and necessary expenses up to a specified sum per person, as a result of a personal injury by promptly distributing what are termed “first-party benefits” without regard to fault.[20] Under some state law, personal injury protection benefits, which encompass certain medical expenses, loss of income, essential services, death, and funeral expense benefits, are guaranteed regardless of who is at fault in causing the accident—therefore, the moniker "no-fault insurance."[21] A no-fault law may also limit tort recovery for personal injuries in actions between covered persons.[22]

A no-fault act places the obligation of procuring insurance on the owner of a vehicle registered and licensed in the state and makes the owner a constructive self-insurer for all PIP benefits that should have been provided.[23] The requirements in some states, that, with specified exceptions, no person may operate or use a motor vehicle upon any public street, road, or highway of the state at any time unless such motor vehicle is insured at all times under a no-fault policy, may be satisfied by any owner of a motor vehicle who meets specified statutory requirements as a self-insurer.[24] The fact that a car rental agency opted to self-insure did not relieve it of primary responsible to provide personal injury protection benefits to those persons injured by the permissive use of its vehicle.[25] A nonresident owner of a motor vehicle operated on the highways of a state is generally subject to the provisions of that state's no-fault law.[26]

Observation:

The National Conference of Commissioners on Uniform State Laws has approved statutes creating a no-fault automobile reparations system, which has been designated the Uniform Motor Vehicle Accident Reparations Act.[27]

Some states have repealed no-fault acts and replaced them with motor vehicle financial responsibility statutes.[28] Conversely, some states have repealed motor vehicle financial responsibility statutes and replaced them with no-fault acts.[29]

Observation:

No-fault coverage and uninsured motorist coverage, although both mandated by statute, are categorically different in their intents and purposes.[30] Both personal injury protection and uninsured motorist (UM) or underinsured motorist (UIM) benefits consider the extent of benefits or damages, but they differ as to consideration of fault; PIP is no-fault coverage for wage loss and medical bills, whereas UM and UIM is coverage dependent on the fault of the uninsured or underinsured motorist.[31]

Footnotes

1 DeMarco v. Stoddard, 223 N.J. 363, 125 A.3d 367 (2015), cert. denied, 137 S. Ct. 44, 196 L. Ed. 2d 28 (2016).

2 Liberty Mut. Ins. Co. v. Excel Imaging, P.C., 879 F. Supp. 2d 243 (E.D. N.Y. 2012).

3 Walton v. Lumbermens Mut. Cas. Co., 88 N.Y.2d 211, 644 N.Y.S.2d 133, 666 N.E.2d 1046 (1996).

4 Wyoming Chiropractic Health Clinic, PC v. Auto-Owners Ins. Co., 308 Mich. App. 389, 864 N.W.2d 598 (2014), appeal denied, 497 Mich. 1029, 863 N.W.2d 54 (2015).

5 Jackson v. Transamerica Ins. Corp. of America, 207 Mich. App. 460, 526 N.W.2d 31 (1994).

6 Selective Ins. Co. v. Lyons, 681 A.2d 1021 (Del. 1996).

7 Garden State Fire & Cas. Co. v. Commercial Union Ins. Co., 176 N.J. Super. 301, 422 A.2d 1327 (App. Div. 1980).

8 Vasques v. Mercury Cas. Co., 947 So. 2d 1265 (Fla. 5th DCA 2007).

9 Svenson v. National Consumer Ins. Co., 322 N.J. Super. 410, 731 A.2d 91 (App. Div. 1999).

10 Daughton v. Maryland Auto. Ins. Fund, 198 Md. App. 524, 18 A.3d 152 (2011).

11 Talmadge v. Burn, 446 N.J. Super. 413, 142 A.3d 757 (App. Div. 2016).

12 State Farm Mut. Auto. Ins. Co. v. Licensed Beverage Ins. Exchange, 146 N.J. 1, 679 A.2d 620 (1996).

13 Garden State Fire & Cas. Co. v. Commercial Union Ins. Co., 176 N.J. Super. 301, 422 A.2d 1327 (App. Div. 1980).
As to rights of subrogation as between automobile insurers, generally, see § 538.

14 Reisenauer v. Schaefer, 515 N.W.2d 152 (N.D. 1994).

15 Bailey v. Rocky Mountain Holdings, LLC, 309 F.R.D. 675 (S.D. Fla. 2015) (under Florida's Personal Injury Protection Statute, all motor vehicle owners must carry personal injury insurance).

16 Goodkin v. U.S., 773 F.2d 19 (2d Cir. 1985); Smith v. Washington Metropolitan Area Transit Authority, 631 A.2d 387 (D.C. 1993).

17 Aetna Health Plans v. Hanover Ins. Co., 27 N.Y.3d 577, 36 N.Y.S.3d 431, 56 N.E.3d 213 (2016).

18 Licenziato v. U.S., 889 F. Supp. 162 (D.N.J. 1995), referring to New York law.

19 Do v. American Family Mut. Ins. Co., 779 N.W.2d 853 (Minn. 2010).

20 Smith v. Washington Metropolitan Area Transit Authority, 631 A.2d 387 (D.C. 1993).

21 Onyeneho v. Allstate Ins. Co., 80 A.3d 641 (D.C. 2013) (applying New Jersey law).

22 Oberly v. Bangs Ambulance Inc., 96 N.Y.2d 295, 727 N.Y.S.2d 378, 751 N.E.2d 457 (2001).
As to effect on tort liability, see § 33.

23 Scoggins v. Unigard Ins. Co., 869 P.2d 202 (Colo. 1994).

24 Alzharani v. Pacific Intern. Services Corp., 82 Haw. 466, 923 P.2d 408 (1996).

25 Chambers v. Agency Rent-A-Car, Inc., 878 P.2d 1164 (Utah Ct. App. 1994).
Similarly, the Southeastern Pennsylvania Transportation Authority, as a self-insurer, was mandated to provide all bus passengers with personal injury protection and uninsured motorist benefits. Knox v. SEPTA, 81 A.3d 1016 (Pa. Commw. Ct. 2013).

26 Overbaugh v. Strange, 254 Kan. 605, 867 P.2d 1016 (1994).

27 Unif. Motor Vehicle Accident Reparations Act §§ 1 et seq.

28 Wolgemuth v. Harleysville Mut. Ins. Co., 370 Pa. Super. 51, 535 A.2d 1145 (1988).

29 As to motor vehicle financial responsibility laws, generally, see §§ 25 to 29.

30 Fimpel v. State Auto. Mut. Ins. Co., 322 Ark. 797, 911 S.W.2d 950 (1995).

31 Robinson v. Tri-County Metropolitan Transp. Dist. of Oregon, 277 Or. App. 60, 370 P.3d 864 (2016).
As to uninsured and underinsured motorist coverage, see §§ 34 to 36.

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7 Am. Jur. 2d Automobile Insurance § 31

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I. In General

E. Insurance Required by Statute

3. No-Fault Insurance; Personal Injury Protection (PIP)

§ 31. Validity and construction of no-fault automobile insurance laws and regulations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2817

A.L.R. Library

Validity and construction of "no-fault" automobile insurance plans, 42 A.L.R.3d 229

The validity of no-fault automobile insurance statutes has generally been upheld.[1]

Legislative intent is the polestar that guides a court's statutory interpretation under a motor vehicle no-fault law, including the personal injury protection statute; such intent is derived primarily from the language of the statute.[2] State no-fault automobile insurance statutes, being remedial in nature,[3] must be liberally construed[4] in favor of those for whom benefit was intended, that is, persons injured in motor vehicle accidents,[5] and to further their remedial and beneficent purposes.[6] A no-fault statute is incorporated into an automobile insurance policy, and when conflict exists between the insurance policy and the statute, the latter governs.[7] In this regard, any clause in a "complying policy," required under a state's no-fault law, that attempts to dilute, condition, or limit statutorily mandated coverage is void and unenforceable.[8] Where a no-fault insurance statute requires an insurer which issues a motor vehicle liability policy, with respect to an automobile registered or primarily garaged in the state, to include in that policy personal injury protection (PIP) coverage as provided in the statute, it is contrary to public policy to permit

the insurer to offer no-fault coverage which is less than that required under the statute, and to the extent that the coverage is so circumscribed, the limitations are invalid.[9] Similarly, administrative regulations promulgated to implement a no-fault insurance law are governed by that law, and such a regulation is invalid if its effect would limit the rights of the insured or expand the rights of the insurer in a manner not contemplated by the statute.[10] Insurance contracts in conflict with the no-fault act must be construed when reasonably possible in a manner that renders them compatible with the existing public policy as reflected in the no-fault act, but no-fault policies may expand coverage beyond the mandatory coverages required by the act.[11]

No class of accident victims may be precluded from the mandated coverages of the no-fault act; however, no language in the no-fault act renders invalid an exclusion of a particular class of accident victims from coverage beyond that mandated by the act. Once an insurance policy alone, or a primary and an umbrella policy together, has satisfied the coverage mandate of the no-fault act, no further no-fault act regulation of coverages exists.[12]

Footnotes

1 St. Clare's Hosp. v. Allcity Ins. Co., 201 A.D.2d 718, 608 N.Y.S.2d 325 (2d Dep't 1994).

2 State Farm Mutual Automobile Insurance Company v. Shands Jacksonville Medical Center, Inc., 2017 WL 633768 (Fla. 2017).

3 As to nature and purposes of automobile no-fault insurance and personal injury protection, see § 30.

4 Palisades Safety & Ins. Ass'n v. Bastien, 175 N.J. 144, 814 A.2d 619 (2003).

5 Houchens v. Government Employees Insurance Company, 2016 WL 4709168 (Ky. Ct. App. 2016).

6 Allstate Ins. Co. v. Smith, 902 P.2d 1386 (Colo. 1995).

7 Ward v. Allstate Ins. Co., 45 F.3d 353 (10th Cir. 1994).

8 McConnell v. St. Paul Fire and Marine Ins. Co., 906 P.2d 109 (Colo. 1995).

9 Hoglin v. Nationwide Mut. Ins. Co., 144 N.J. Super. 475, 366 A.2d 345 (App. Div. 1976).

10 Royal Globe Ins. Co. v. Connolly, 54 A.D.2d 1117, 389 N.Y.S.2d 207 (4th Dep't 1976).

11 Lewis v. Farmers Ins. Exch., 315 Mich. App. 202, 888 N.W.2d 916 (2016).

12 Bundul v. Travelers Indem. Co., 753 N.W.2d 761 (Minn. Ct. App. 2008).

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7 Am. Jur. 2d Automobile Insurance § 32

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Automobile Insurance
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I. In General

E. Insurance Required by Statute

3. No-Fault Insurance; Personal Injury Protection (PIP)

§ 32. Necessity of providing or offering no-fault automobile coverage; rejection of offer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2820 to 2823

No-fault coverage is made mandatory by statute in some jurisdictions,[1] where automobile insurance policies must comply with the mandatory minimum coverages of the applicable statutes.[2] In some jurisdictions, statutes designated as no-fault acts require every automobile owner to acquire a "complying policy" which provides the requisite amount of coverage mandated by the act. Such a complying policy may provide more extensive coverage than that mandated,[3] as all owners and registrants of automobiles are free to purchase insurance contracts that provide greater coverage than the minimum required under the no-fault act.[4]

In some jurisdictions no-fault insurance must be offered to prospective insureds, but may be rejected by the insureds.[5] to which the defense of misrepresentation would be precluded as a matter of public policy.[6] The insurer must do more than merely make the coverage available.[7]

Statutes have sometimes required that all named insureds in existing motor vehicle liability policies who have not previously responded to an offer to accept or reject optional coverages required to be offered under a no-fault act be given an opportunity to accept or reject, in writing, the optional coverages required under the statute.[8] Pursuant to a statute requiring an insurer to offer optional personal injury protection coverage of not less than a specified amount and that such coverage can be reduced only with the written consent of the policyholder, the absence of a written rejection or reduction of additional benefits will be interpreted as acceptance of additional coverage, regardless of the presence or absence of signatures or the propriety of the form itself.[9] However, an offer of optional coverage under a no-fault insurance policy can be made in some states either in writing or orally, and the burden of proving the offer and its adequacy is on the insurer, although in such jurisdictions it is still required that

the insured be given enough information to make an intelligent decision about the optional coverage.[10] Some state law allows for the use of an electronically generated record to satisfy the writing requirement for a rejection of coverage.[11]

Footnotes

1 State Farm Mut. Auto. Ins. Co. v. Licensed Beverage Ins. Exchange, 146 N.J. 1, 679 A.2d 620 (1996).

2 Selective Ins. Co. v. Lyons, 681 A.2d 1021 (Del. 1996).
As to risks and coverage under no-fault insurance policies, generally, see §§ 343 to 352.

3 McConnell v. St. Paul Fire and Marine Ins. Co., 906 P.2d 109 (Colo. 1995).

4 Krohn v. Home-Owners Ins. Co., 490 Mich. 145, 802 N.W.2d 281 (2011).

5 Fimpel v. State Auto. Mut. Ins. Co., 322 Ark. 797, 911 S.W.2d 950 (1995).
An insurance company is required to offer personal injury protection coverage; however, an insured is not required to purchase PIP coverage. Hubb v. State Farm Mut. Auto. Ins. Co., 85 A.3d 836 (D.C. 2014).

6 Platt v. National General Ins. Co., 205 Ga. App. 705, 423 S.E.2d 387 (1992).

7 Cardenas v. Financial Indem. Co., 254 P.3d 1164 (Colo. App. 2011).

8 Enfinger v. International Indem. Co., 253 Ga. 185, 317 S.E.2d 816 (1984).

9 Government Employees Ins. Co. v. Mooney, 250 Ga. 760, 300 S.E.2d 799 (1983).

10 Yeager v. Auto-Owners Ins. Co., 335 N.W.2d 733 (Minn. 1983).

11 Barwick v. Government Employee Ins. Co., Inc., 2011 Ark. 128, 2011 WL 1198830 (2011).

7 Am. Jur. 2d Automobile Insurance § 33

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I. In General

E. Insurance Required by Statute

3. No-Fault Insurance; Personal Injury Protection (PIP)

§ 33. Effect of no-fault automobile insurance on tort liability

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Automobiles 251.13, 251.14, 251.19

A.L.R. Library

What constitutes sufficiently serious personal injury, disability, impairment, or the like to justify recovery of damages outside of no-fault automobile insurance coverage, 33 A.L.R.4th 767

Trial Strategy

Litigating the No-Fault Serious-Injury Threshold, 59 Am. Jur. Trials 347

Some no-fault automobile insurance acts have partially but not completely eliminated the rights of automobile accident victims to recover in tort for their injuries.[1] In this regard, a no-fault law may limit tort recovery for personal injuries in actions between covered persons.[2] Thus, for example, while, noneconomic losses may be recovered only by bringing a tort action against the driver "at fault" in an accident, some no-fault acts restrict a victim's ability to bring such actions.[3] Statutory plans for

compensation of automobile accident victims without regard to fault generally provide that, with respect to the operation of a covered vehicle, there may be no tort liability to any person entitled to receive statutory benefits, within the limits specified by the act.[4] The effect of such a provision is to permit but a single indemnity for covered losses; losses not covered by first-party insurance, or in excess of its limits, are recoverable under conventional tort liability rules.[5] However, exemptions from tort liability do not apply to injuries sustained by a person who is not eligible to, or who is not required to, participate in the no-fault plan.[6]

Observation:

A passenger's failure to maintain the mandatory medical expense benefits coverage on cars did not preclude the passenger from recovering noneconomic damages under the tortfeasor's policy of automobile insurance, where the passenger's uninsured cars were not involved in the accident.[7]

Under the terms of some no-fault acts, the threshold point at which the right to receive benefits for personal injuries without regard to fault ceases, and conventional tort liability rules become applicable, is set by measurement of the cost of medical treatment of the injuries.[8] Furthermore, under some statutes, the exemption from tort liability does not apply when injuries of a serious nature are received as the result of an automobile accident,[9] which produce an effect on the plaintiff's normal functioning or range of motion.[10] Permanent pain, even of an intermittent nature, may form the basis of a "serious injury" under such a no-fault statute to meet the threshold for the availability of a tort action.[11] Under one state's no-fault insurance act, tort liability does survive in narrow instances, for example when there is a death, serious impairment of body function, or permanent serious disfigurement.[12]

As to whether a "serious injury" has occurred, for the purpose of reinstating the injured person's right to recover for noneconomic loss, is generally a question of fact for determination by the jury,[13] and a plaintiff must present objective proof of injury, as subjective complaints of pain will not, standing alone, support a claim for serious injury.[14] Under some no-fault laws, an individual injured in an automobile accident cannot recover damages for personal injuries caused by the negligent operation of a motor vehicle unless he or she first establishes that he or she suffered permanent injury within a reasonable degree of medical probability, other than scarring or disfigurement.[15] When a plaintiff relies upon the permanent consequential limitation or significant limitation of use categories of serious injury under the no-fault law, the plaintiff must demonstrate that the limitation of use that he or she sustained is more than mild, minor or slight.[16] Furthermore, no-fault statutes have sometimes abolished tort liability except to the extent that there was a medically determinable physical or mental impairment which prevented the victim from performing all, or substantially all, of the material acts and duties which constituted his or her usual and customary daily activities, and which continued for more than a specified number of consecutive days.[17]

In some instances, while a no-fault law may not permit nonresidents to recover under such law, it may permit them to maintain civil tort actions against the resident tortfeasor subject to the limitations of recovery which would apply if benefits were to be paid under the no-fault law.[18]

CUMULATIVE SUPPLEMENT

Cases:

Motorist and passenger who suffered injuries when a recycling truck rear-ended motorist's vehicle that was stopped at a stop light did not suffer a total loss of use of their neck and back, as required to recover damages under the no-fault law against recycling company and its truck driver; motorist's and passenger's evidence acknowledged that they had some, albeit limited, range of motion in their neck and back. N.Y. Insurance Law § 5102(d). Gjoleka v. Caban, 188 A.D.3d 458, 135 N.Y.S.3d 92 (1st Dep't 2020).

[END OF SUPPLEMENT]

Footnotes

1 Goodkin v. U.S., 773 F.2d 19 (2d Cir. 1985) (referring to the provisions of the New York no-fault act).

2 Licenziato v. U.S., 889 F. Supp. 162 (D.N.J. 1995) (referring to New York law); Reisenauer v. Schaefer, 515 N.W.2d 152 (N.D. 1994).

3 Smith v. Washington Metropolitan Area Transit Authority, 631 A.2d 387 (D.C. 1993).
Under the No-Fault Law, a person injured in an automobile accident may bring a plenary action in tort to recover for noneconomic loss, pain, and suffering, but must show that he or she has suffered a "serious injury" within the meaning of the No-Fault Law. Oberly v. Bangs Ambulance Inc., 96 N.Y.2d 295, 727 N.Y.S.2d 378, 751 N.E.2d 457 (2001).
As to actions or claims under no-fault statutes, generally, see §§ 604 to 607.

4 Jones v. Giordano, 81 Misc. 2d 717, 366 N.Y.S.2d 534 (Sup 1975).

5 Adams v. Government Emp. Ins. Co., 52 A.D.2d 118, 383 N.Y.S.2d 319 (1st Dep't 1976).

6 Chipman v. Massachusetts Bay Transp. Authority, 366 Mass. 253, 316 N.E.2d 725 (1974).

7 Dziuba v. Fletcher, 188 N.J. 339, 907 A.2d 427 (2006).

8 Mejiah v. Rodriguez, 342 So. 2d 1066 (Fla. 3d DCA 1977).

9 Scarfone v. Magaldi, 522 So. 2d 902 (Fla. 3d DCA 1988); Olivencia v. Depompeis, 134 A.D.3d 1079, 22 N.Y.S.3d 554 (2d Dep't 2015).

10 Davis v. Cottrell, 101 A.D.3d 1300, 956 N.Y.S.2d 248 (3d Dep't 2012).

11 Lynch v. Adirondack Transit Lines, Inc., 169 A.D.2d 904, 564 N.Y.S.2d 826 (3d Dep't 1991).

12 CSX Transportation, Inc. v. Benore, 154 F. Supp. 3d 541 (E.D. Mich. 2015).

13 Sackman v. New Jersey Mfrs. Ins. Co., 445 N.J. Super. 278, 137 A.3d 1204 (App. Div. 2016).

14 Baytsayeva v. Shapiro, 868 F. Supp. 2d 6 (E.D. N.Y. 2012).

15 Estate of Wallace v. Fisher, 567 So. 2d 505 (Fla. 5th DCA 1990).

16 Jones v. Marshall, 147 A.D.3d 1279, 47 N.Y.S.3d 791 (3d Dep't 2017).

17 Widziszewski v. Mashuda Corp., 288 Pa. Super. 191, 431 A.2d 353 (1981).

18 Cyr v. Farias, 367 Mass. 720, 327 N.E.2d 890 (1975).

7 Am. Jur. 2d Automobile Insurance § 34

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I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

a. Scope and Purposes of Statutes

§ 34. Nature of uninsured and underinsured motorist coverage

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2772 to 2774

Trial Strategy

Uninsured and Underinsured Motorist Claims, 81 Am. Jur. Trials 425

Some state legislatures, cognizant of the fact that not all motorists would carry liability insurance, have passed uninsured motorist acts as a necessary companion to the applicable state motor vehicle safety responsibility act[1] to protect the public from damages caused by uninsured or underinsured motorists.[2] Underinsured motorist (UIM) coverage and uninsured motorist (UM) coverage are both intended to place the insured in the same position he or she would have occupied if the tortfeasor had carried adequate insurance.[3] Uninsured/underinsured motorist (UM/UIM) coverage substitutes for liability insurance normally available to injured persons,[4] although UM coverage is not itself a type of liability insurance.[5] Uninsured motorist insurance does not actually insure the uninsured motorist; it insures the insured and assures him of some recovery when the other parties do not have liability insurance.[6] This type of insurance coverage is neither an all-risk insurance designed to provide coverage for all injuries incurred, nor is it a no-fault motor vehicle insurance that provides coverage without regard to whether a plaintiff is legally entitled to recover damages from an uninsured or unidentified motorist.[7] Uninsured motorist coverage inures to a

person, not to a vehicle; in other words, UM coverage is not dependent on the insured person being injured in connection with a vehicle which is covered by the liability insurer against whom recovery is sought under the UM provisions.[8]

Observation:

The personal injury protection (PIP) statute and the uninsured motorist (UM) statute, while part of the larger mosaic of a state's mandatory automobile insurance coverage, are not mutual substitutes, but instead are designed to provide different coverages applicable to different circumstances.[9] Both personal injury protection and uninsured motorist or underinsured motorist benefits consider the extent of benefits or damages, but they differ as to consideration of fault; PIP is no-fault coverage, whereas UM and UIM is coverage dependent on the fault of the uninsured or underinsured motorist.[10]

Underinsured motorist insurance is a first-party coverage arrangement that entitles an insured to compensation for injuries from the insured's insurer.[11] UIM coverage is intended to provide insurance coverage for insureds who have been bodily injured by a negligent motorist whose own automobile liability insurance coverage is insufficient to fully pay for the injured person's actual damages.[12] Such coverage allows the insured to recover when the tortfeasor has insurance, but the coverage is insufficient to fully compensate the injured party.[13] It protects persons who suffer injury arising out of the maintenance or use of a motor vehicle and are legally entitled to recover damages from owners or operators of underinsured motor vehicles.[14] Underinsured motorist coverage is a subset of uninsured motorist coverage, and in some states is governed by the statute on uninsured motorist coverage.[15] Public policy considerations that favor adequate compensation for accident victims apply to UIM coverage in spite of the fact that UIM coverage may not be mandatory.[16] Underinsured motorist coverage is floating, personal accident insurance that follows the insured individual wherever he goes, rather than insurance on a particular vehicle.[17]

Observation:

There are two types of UIM coverage. Under the first, the coverage places the insured party in the same position that he would have been in had the tortfeasor carried liability insurance in the amount of the insured's UIM policy limit. Under this “gap” theory of UIM coverage, the coverage merely fills the “gap” between the tortfeasor's liability coverage and the injured party's UIM coverage.[18] Under the second view, the “excess” theory of UIM coverage, the injured insured's coverage is reckoned as “excess” over and above the liability policy of the tortfeasor, and UIM coverage supplies a fund for full compensation to the injured insured, so that the insured is entitled to compensation from his or her insurer regardless of any recovery from other sources. The insured may therefore recover UIM benefits until his policy limits are reached or he or she is fully compensated for his or her damages, whichever comes first.[19]

Statutes requiring UM/UIM coverage set the minimum standard of protection that the legislature deems acceptable for UM and UIM coverage.[20] Statutes in some states set out a comprehensive model UM/UIM motorist policy that may be varied only in the sense that terms that disfavor insureds may be excluded or softened and extraneous terms that are neutral or that favor insureds may be added.[21] When UM coverage is not part of an automobile policy, such coverage is created by operation of law unless the insurer expressly offers it in writing, and the insured expressly rejects it in writing before the time that the coverage begins, and it makes no difference whether the parties contemplated such coverage.[22]

While it is important to protect the public from irresponsible or impecunious drivers, uninsured motorist coverage is not intended to provide coverage in every uncompensated situation.[23]

Footnotes

1 Ulrich v. United Services Auto. Ass'n, 839 P.2d 942 (Wyo. 1992).
As to motor vehicle financial responsibility laws, generally, see §§ 25 to 29.

2 Sinclair v. Zurich American Ins. Co., 141 F. Supp. 3d 1162 (D.N.M. 2015).

3 James v. SCR Medical Transp., Inc., 2016 IL App (1st) 150358, 406 Ill. Dec. 775, 61 N.E.3d 1043 (App. Ct. 1st Dist. 2016).
As to purposes of uninsured motorist coverage, see § 35.
As to purposes of underinsured motorist coverage, see § 36.

4 Simpson v. GEICO General Ins. Co., 907 S.W.2d 942 (Tex. App. Houston 1st Dist. 1995).

5 Kratz v. Kratz, 1995 OK 63, 905 P.2d 753 (Okla. 1995).

6 Martin v. Powers, 505 S.W.3d 512 (Tenn. 2016).

7 Masler v. State Farm Mut. Auto. Ins. Co., 894 S.W.2d 633 (Ky. 1995).

8 Downey v. Travelers Property Cas. Ins. Co., 74 So. 3d 952 (Ala. 2011).

9 Livsey v. Mercury Ins. Group, 197 N.J. 522, 964 A.2d 312 (2009).
As to no-fault insurance or personal injury protection, generally, see §§ 30 to 33.

10 Robinson v. Tri-County Metropolitan Transp. Dist. of Oregon, 277 Or. App. 60, 370 P.3d 864 (2016).

11 State Farm Mutual Automobile Insurance Company v. Riggs, 484 S.W.3d 724 (Ky. 2016); Gillespie v. National Farmers Union Property & Cas. Co., 2016 ND 193, 885 N.W.2d 771 (N.D. 2016).

12 Fanning v. Progressive Northwestern Ins. Co., 412 S.W.3d 360 (Mo. Ct. App. W.D. 2013).

13 Hollar By and Through Hollar v. Hawkins, 119 N.C. App. 795, 460 S.E.2d 337 (1995).

14 Nationwide Mut. Ins. Co. v. Hampton, 935 F.2d 578 (3d Cir. 1991).

15 Johnson v. First Acceptance Insurance Company, Inc., 2017 WL 65326 (Ala. Civ. App. 2017).

16 Hardy v. Progressive Specialty Ins. Co., 2003 MT 85, 315 Mont. 107, 67 P.3d 892 (2003).

17 Maxam v. American Family Mutual Insurance Company, 504 S.W.3d 124 (Mo. Ct. App. W.D. 2016), transfer denied, (Nov. 22, 2016).

18 Feeley v. Allstate Ins. Co., 178 Vt. 642, 2005 VT 87, 882 A.2d 1230 (2005).

19 U.S. Fidelity and Guar. Co. v. Sandt, 854 P.2d 519 (Utah 1993).
As to who is an "underinsured motorist" under these differing theories of underinsured motorist coverage, see §§ 326 to 330.

20 State Farm Mut. Auto. Ins. Co. v. Jakupko, 881 N.E.2d 654 (Ind. 2008).

21 United Nat. Ins. Co. v. DePrizio, 705 N.E.2d 455 (Ind. 1999).

22 Schumacher v. Kreiner, 88 Ohio St. 3d 358, 2000-Ohio-344, 725 N.E.2d 1138 (2000).
As to requirements to provide or offer coverage, see §§ 41 to 44.

23 Vasquez v. American Casualty Co. Of Reading, 389 P.3d 282 (N.M. 2016).

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I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

a. Scope and Purposes of Statutes

§ 35. Purpose of uninsured motorist coverage

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2772

Uninsured motorist (UM) statutes are remedial provisions.[1] UM coverage is not intended to serve as a substitute for comprehensive personal liability insurance,[2] but, rather, to provide protection for the innocent party and enable the insured to recover from his or her own insurer for injuries caused by an uninsured motorist[3] when the liable third party is unable to do so.[4] The basic purpose of an UM statute is to provide protection for an automobile insurance policyholder against the risk of inadequate compensation for injuries or death caused by the negligence of financially irresponsible motorists.[5] Essentially, the purpose of an uninsured motorist act is to protect those who purchase motor vehicle liability insurance from those who do not.[6]

In some states, UM coverage is designed to provide protection for the motoring public from injuries caused by uninsured motorists and hit-and-run motorists,[7] and to protect innocent persons from the negligence of unknown[8] or impecunious tortfeasors.[9] Other goals of UM provisions are to stabilize automobile insurance rates, eliminate some of the waste and fraud which contributes to rate increases, and expand and simplify consumers' coverage choices.[10]

The overall goal of an uninsured motorist statute is to promote a public policy of placing an insured person in the same position[11] or substantially the same position,[12] that he or she would have been in if the uninsured motorist had been properly insured.[13] The intent of the legislature in enacting an uninsured motorist coverage statute is to ensure that persons injured by an uninsured

motorist are protected at least to the extent that compensation is made available to persons injured by a motorist insured for the minimum legal limits.[14] The uninsured motorist statute creates a floor to liability, not a ceiling.[15]

Even so, the purpose of some UM statutes is not to make all drivers whole from accidents with uninsured drivers, but only to make sure that drivers injured by such drivers are protected to the extent that they would have been protected had the driver at fault carried the statutory minimum of liability insurance.[16] The purpose of the legislation mandating the offer of uninsured and underinsured motorist (UM/UIM) coverage is to fill the gap inherent in motor vehicle financial responsibility and compulsory insurance legislation.[17] Some jurisdictions, however, favor a public policy of promoting the full recovery of damages by persons insured under uninsured motorist coverage who are innocent victims of automobile accidents involving uninsured or underinsured motorists.[18]

Observation:

The uninsured motorist statute, however broad its protection for injuries substantially related to the use of an automobile, was not designed to function as general crime insurance.[19]

An uninsured motorist statute may be directed at the protection of a named insured against economic loss resulting from injuries sustained by reason of the negligent operator of uninsured motor vehicles[20] or hit-and-run motor vehicles.[21] Some UM statutes have been designed for the protection of persons injured who are legally entitled to recover damages from owners or operators of uninsured motor vehicles because of bodily injury, sickness, or disease.[22]

Footnotes

1 Old American County Mut. Fire Ins. Co. v. Sanchez, 149 S.W.3d 111 (Tex. 2004).

2 Akerley v. Hartford Ins. Group, 136 N.H. 433, 616 A.2d 511 (1992).

3 Mercury Ins. Group v. Superior Court, 19 Cal. 4th 332, 79 Cal. Rptr. 2d 308, 965 P.2d 1178 (1998); Rivera v. Liberty Mut. Fire Ins. Co., 163 N.H. 603, 44 A.3d 498 (2012).

4 Martin v. Powers, 505 S.W.3d 512 (Tenn. 2016).

5 Willoughby v. City of New Haven, 254 Conn. 404, 757 A.2d 1083 (2000).

6 Martin v. Powers, 505 S.W.3d 512 (Tenn. 2016).

7 Akerley v. Hartford Ins. Group, 136 N.H. 433, 616 A.2d 511 (1992).

8 Rivera v. Liberty Mut. Fire Ins. Co., 163 N.H. 603, 44 A.3d 498 (2012).

9 O'Donoghue v. Farm Bureau Mut. Ins. Co., Inc., 275 Kan. 430, 66 P.3d 822 (2003).

10 Chenard v. Commerce Ins. Co., 440 Mass. 444, 799 N.E.2d 108 (2003).

11 Ryals v. State Farm Mut. Auto. Ins. Co., 134 Idaho 302, 1 P.3d 803 (2000).

12 Luechtefeld v. Allstate Ins. Co., 167 Ill. 2d 148, 212 Ill. Dec. 224, 656 N.E.2d 1058 (1995).

13 Jankowiak v. Allstate Property & Cas. Ins. Co., 201 S.W.3d 200 (Tex. App. Houston 14th Dist. 2006).

14 American Service Ins. Co. v. Pasalka, 363 Ill. App. 3d 385, 299 Ill. Dec. 867, 842 N.E.2d 1219 (1st Dist. 2006); Erie Ins. Exchange v. Heffernan, 399 Md. 598, 925 A.2d 636 (2007).

15 Woznicki v. GEICO General Ins. Co., 443 Md. 93, 115 A.3d 152 (2015).

16 Austin v. Allstate Ins. Co., 16 Cal. App. 4th 1812, 21 Cal. Rptr. 2d 56 (2d Dist. 1993).

17 O'Donoghue v. Farm Bureau Mut. Ins. Co., Inc., 275 Kan. 430, 66 P.3d 822 (2003).
As to the requirements of offering UM/UIM coverage, generally, see §§ 41 to 44.

18 Washington v. Savoie, 634 So. 2d 1176 (La. 1994).

19 Livsey v. Mercury Ins. Group, 197 N.J. 522, 964 A.2d 312 (2009).

20 Richardson v. Farm Bureau Town & Country Ins. Co., 899 S.W.2d 119 (Mo. Ct. App. E.D. 1995).

21 Ladouceur v. Hanover Ins. Co., 682 A.2d 467 (R.I. 1996).

22 WEA Ins. Corp. v. Freiheit, 190 Wis. 2d 111, 527 N.W.2d 363 (Ct. App. 1994).

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7 Am. Jur. 2d Automobile Insurance § 36

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I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

a. Scope and Purposes of Statutes

§ 36. Purpose of underinsured motorist coverage

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2772, 2787

State underinsurance legislation is remedial in nature[1] and intended to restructure the automobile liability insurance system in a way which lowers rates to the consuming public while continuing to provide reduced, but effective, levels of coverage.[2] The public policy underlying underinsured motorist (UIM) coverage is the creation of a second layer of floating protection for the insured.[3] There is a strong public interest in providing full recovery by means of underinsured motorist coverage for automobile accident victims who suffer damages caused by a tortfeasor who is not covered by adequate liability insurance.[4] The purpose of an UIM statute is to broaden insurance protection for those injured in accidents involving uninsured or underinsured motorists,[5] and to put the insured in the same position he or she would have occupied had the at-fault vehicle carried liability coverage in the same amount as selected by the insured in his or her underinsured motor vehicle policy.[6] The aim of UIM coverage is to provide additional indemnification for the insured person in accidents involving insured motorists with liability coverages that are not sufficient to provide complete compensation for the insured person,[7] and to give the insured the recovery he or she would have received if the underinsured motorist—that is, the tortfeasor—had maintained an adequate policy of liability insurance.[8] It has also been stated that the purpose of UIM coverage is neither to guarantee full compensation for a claimant's injuries nor to ensure that the claimant will be eligible to receive the maximum payment available under any applicable policy.[9]

Observation:

A classification created by an UIM statute, such that automobile accident victims in certain circumstances involving multiple claimants are denied UIM coverage, even though their injuries are not fully compensated under the tortfeasor's liability policy, is rationally related to a legitimate state purpose of giving automobile accident victims access to insurance protection to compensate for damages that would have been recoverable if an underinsured tortfeasor had maintained adequate liability coverage, and thus does not violate equal protection under the rational basis test.[10]

Indeed, UIM protection is not intended to provide a greater recovery than would have been available from the tortfeasor.[11] Rather, the public policy of an UIM statute is to give a personal injury claimant access to insurance protection to compensate for the damages that would have been recoverable if the underinsured motorist had maintained an adequate policy of liability insurance.[12] In extending the law to require underinsured as well as uninsured motor coverage, the legislature intended to permit the insured injured person the same recovery which would have been available to him had the tortfeasor been insured to the same extent as the injured party; the applicable statute specifically mandates coverage that fills the gap left by an underinsured tortfeasor.[13]

Observation:

In some jurisdictions, there are different goals with regard to UM coverage and UIM coverage, the goal of UIM coverage being full compensation to the insured victim in order to make the victim "whole," while the goal of UM coverage is to ensure minimum compensation to insured victims when injured by a person with no liability insurance.[14]

Footnotes

1 Kilner v. State Farm Mut. Auto. Ins. Co., 252 Kan. 675, 847 P.2d 1292 (1993).

2 Hanover Ins. Co. v. Pascar, 421 Mass. 442, 658 N.E.2d 142 (1995).

3 Maxam v. American Family Mutual Insurance Company, 504 S.W.3d 124 (Mo. Ct. App. W.D. 2016), transfer denied, (Nov. 22, 2016).

4 Garces-Rodriguez v. GEICO Indemnity Company, 209 So. 3d 389 (La. Ct. App. 5th Cir. 2016).

5 Mid-Century Ins. Co. v. Henault, 128 Wash. 2d 207, 905 P.2d 379, 59 A.L.R.5th 789 (1995).

6 Acuity v. Decker, 2015 IL App (2d) 150192, 399 Ill. Dec. 364, 46 N.E.3d 402 (App. Ct. 2d Dist. 2015).

7 National Union Fire Ins. Co. v. Reynolds, 77 Haw. 490, 889 P.2d 67 (Ct. App. 1995).
8 Pennsylvania Nat. Mut. Cas. Co. v. Black, 591 Pa. 221, 916 A.2d 569 (2007).
9 Florestal v. Government Employees Ins. Co., 236 Conn. 299, 673 A.2d 474 (1996).
10 Florestal v. Government Employees Ins. Co., 236 Conn. 299, 673 A.2d 474 (1996).
11 Smith v. Safeco Ins. Co. of America, 225 Conn. 566, 624 A.2d 892 (1993).
12 Florestal v. Government Employees Ins. Co., 236 Conn. 299, 673 A.2d 474 (1996).
13 Tibbetts v. Maine Bonding and Cas. Co., 618 A.2d 731 (Me. 1992).
14 Williams v. State Farm Mut. Auto. Ins. Co., 992 F.2d 781 (8th Cir. 1993) (construing Iowa law).
As to the purposes of UM coverage statutes, generally, see § 35.

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Automobile Insurance

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I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

b. Construction, Effect, and Application of Statutes

§ 37. Construction of uninsured and underinsured motorist laws

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2772 to 2774

The provisions of a state statute which governs both uninsured motorist and underinsured motorist (UM/UIM) coverage are a part of every policy of insurance to which it is applicable.[1] Thus, a liability policy issued without UM coverage, where such coverage is required by statute, is deemed to include such coverage to the full extent required, as a matter of law,[2] even though no additional premium has been charged.[3]

Uninsured and underinsured motorist laws, being remedial in nature,[4] must be liberally construed[5] in order to effectuate the statutory purposes of such coverage,[6] and in favor of the insured[7] and coverage.[8] Contracts for UM coverage must be construed in light of the public policy mandated by the legislature; the primary object remains indemnification for an insured's loss rather than defeat of his or her claim.[9]

The statutes' liberal construction requires that statutory exceptions to coverage be interpreted strictly.[10] However, while any doubtful language in an UM statute should be resolved in favor of the insured, the principle of liberal interpretation should not be applied to give a forced construction or one which inserts a requirement not contained in an UM statute where the statute is clear in the context of the factual situation.[11] Indeed, reasonable limitations will be imposed on the construction of the UM statute to afford insurers some financial protection from uninsured motorist warranted claims.[12] Nevertheless, those insurance policy clauses which are inconsistent with and do not further the purpose of the UM/UIM statutes are invalid,[13] and the relevant

statutory provisions prevail as if embodied in the policy.[14] Any restriction in the scope of coverage of UM/UIM statute requires must be specifically authorized by statute,[15] and insurance policy provisions designed to reduce or limit UM coverage to less than that prescribed by the applicable UM statute are void[16] and unenforceable.[17] However, while insurers may not use policy language to diminish coverage mandated by an UM statute, they may enhance such coverage.[18] Consistent with the public policy of affording minimal protection for innocent victims, an insured can purchase a higher amount of UM insurance, which becomes available when the insured's UM coverage, as well his damages, exceed the liability coverage of the tortfeasors.[19]

Regulations promulgated by appropriate state officials in implementing UM statutes are presumed valid,[20] have the force of the statutes themselves,[21] and may be looked to in the interpretation or clarification of such a statute,[22] provided that such regulations are not inconsistent with the applicable statute.[23]

Footnotes

1 Colonia Underwriters Ins. Co. v. Richardson, 325 Ark. 300, 924 S.W.2d 808 (1996).

2 Dunn v. Hackett, 833 S.W.2d 78 (Tenn. Ct. App. 1992).

3 Modglin v. State Farm Mut. Auto. Ins. Co., 273 Cal. App. 2d 693, 78 Cal. Rptr. 355 (4th Dist. 1969).

4 Travelers Home and Marine Ins. Co. v. Castellanos, 297 Ga. 174, 773 S.E.2d 184 (2015).
As to nature and scope of UM/UIM statutes, see § 34.

5 Cramer v. National Casualty Company, 190 F. Supp. 3d 510 (D.S.C. 2016); O'Donoghue v. Farm Bureau Mut. Ins. Co., Inc., 275 Kan. 430, 66 P.3d 822 (2003).

6 Gyori v. Johnston Coca-Cola Bottling Group, Inc., 76 Ohio St. 3d 565, 1996-Ohio-358, 669 N.E.2d 824 (1996).
As to the purposes of UM/UIM statutes, see §§ 35, 36.

7 Greenvall v. Maine Mut. Fire Ins. Co., 1998 ME 204, 715 A.2d 949 (Me. 1998).

8 Cramer v. National Casualty Company, 190 F. Supp. 3d 510 (D.S.C. 2016); De Smet Ins. Co. of South Dakota v. Gibson, 1996 SD 102, 552 N.W.2d 98 (S.D. 1996).

9 American States Ins. Co. v. LaFlam, 69 A.3d 831 (R.I. 2013).

10 Tyler v. Employers Mut. Cas. Co., 274 Kan. 227, 49 P.3d 511 (2002); Rapalo-Alfaro v. Lee, 173 So. 3d 1174 (La. Ct. App. 4th Cir. 2015).

11 Porter v. Amica Mut. Ins. Co., 789 F. Supp. 2d 284 (D.R.I. 2011).

12 Ladouceur v. Hanover Ins. Co., 682 A.2d 467 (R.I. 1996).

13 Simpson v. GEICO General Ins. Co., 907 S.W.2d 942 (Tex. App. Houston 1st Dist. 1995).
As to specific risks exclusions permissible under UM/UIM clauses, see § 34.

14 Carter v. Standard Fire Ins. Co., 406 S.C. 609, 753 S.E.2d 515 (2013).

15 Hurst v. Nationwide Mut. Ins. Co., 652 A.2d 10 (Del. 1995).

16 Spradlin v. State Farm Mut. Auto. Ins. Co., 650 So. 2d 1383 (Miss. 1995).

17 Estate of Ingram ex rel. Larsen v. American States Ins. Co., 44 F. Supp. 3d 1046 (E.D. Wash. 2014).

18 Erickson v. Farmers Ins. Co. of Oregon, 331 Or. 681, 21 P.3d 90 (2001).

19 Woznicki v. GEICO General Ins. Co., 443 Md. 93, 115 A.3d 152 (2015).

20 Orkney v. Hanover Ins. Co., 248 Conn. 195, 727 A.2d 700 (1999).

21 Pecker v. Aetna Cas. & Sur. Co., 171 Conn. 443, 370 A.2d 1006 (1976).

22 Roy v. Centennial Ins. Co., 171 Conn. 463, 370 A.2d 1011 (1976).

23 Sinicropi v. State Farm Ins. Co., 55 A.D.2d 957, 391 N.Y.S.2d 444 (2d Dep't 1977).

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I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

b. Construction, Effect, and Application of Statutes

§ 38. Prospective or retroactive application of uninsured and underinsured motorist laws

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1851, 2772 to 2774

Uninsured and underinsured motorist (UM/UIM) statutes or provisions generally apply prospectively only,[1] so that UM coverage does not automatically attach to policies which are in existence at the time of the enactment of such a statute.[2] The rule against retroactive application applies only to the initial issuance of an insurance contract, so that a policy, although issued prior to the enactment of the statute, is required to contain mandatory uninsured motorist coverage upon renewal, or it will be deemed to contain the required coverage.[3] An amendment to a maximum liability provision of a statute uninsured and underinsured motorist coverage would not be retroactively applied, where there was no evidence that such legislation was meant to operate retrospectively.[4] However, a statute barring UM/UIM coverage if the applicable statute of limitations has expired on the insured's claim against the tortfeasor makes a procedural change, operates as a statute of limitations on UM and UIM claims, and, therefore, applies retroactively to a claim that accrues before and is filed after the effective date, even though it is part of the substantive amendment to the UM and UIM laws.[5]

Footnotes

1 United Credit Plan of Jena, Inc. v. Hailey, 341 So. 2d 58 (La. Ct. App. 3d Cir. 1976).

2 Higgins v. MFA Mut. Ins. Co., 550 S.W.2d 811 (Mo. Ct. App. 1977).

A provision of a UIM statute that required insurers to send notice to policyholders of the purpose of UIM coverage was not retroactive. Kingston v. State Farm Auto. Ins. Co., 2015 UT App 28, 344 P.3d 167 (Utah Ct. App. 2015), cert. denied, 352 P.3d 106 (Utah 2015).

3 Modglin v. State Farm Mut. Auto. Ins. Co., 273 Cal. App. 2d 693, 78 Cal. Rptr. 355 (4th Dist. 1969).

4 Proctor v. Minnesota Mut. Fire & Cas., 248 Neb. 289, 534 N.W.2d 326 (1995).

5 Kratochvil v. Motor Club Ins. Ass'n, 255 Neb. 977, 588 N.W.2d 565 (1999).

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I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

b. Construction, Effect, and Application of Statutes

§ 39. Applicability of uninsured and underinsured motorist laws to self-insurers

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2776

A.L.R. Library

Applicability of uninsured motorist statutes to self-insurers, 27 A.L.R.4th 1266

The requirements of uninsured motorist (UM) statutes in some jurisdictions have been deemed applicable to holders of certificates of self-insurance,[1] on the basis that a plan and certificate of self-insurance serve as the substantial equivalent of an insurance "policy" for purposes of an UM statute,[2] and, thus, in the absence of the rejection of such coverage in writing, UM coverage will be implied as included in a self-insurance plan.[3] Thus, cities and transportation authorities, as self-insurers, have been required to carry UM coverage.[4] The right to obtain uninsured motorist protection from a self-insurer is no less than the corresponding right under a policy issued by an insurer.[5] Furthermore, a self-insurer's statutory obligation under a statutory provision to offer UM coverage to its customers has been deemed to apply with equal force to a self-insurer's obligation to offer underinsured motorist (UIM) coverage to its customers under another statutory provision.[6] In a jurisdiction requiring self-insurers to comply with UM statutes, where a self-insurer does not limit its UIM coverage, the statutory minimum is implied at law.[7] Self-insurers need not purchase any coverage to protect against loss resulting from the liability imposed by law; rather,

the self-insurer agrees to perform all obligations required under the law, including to provide underinsured motorist coverage to occupants of its motor vehicles at the statutory minimum limits.[8]

In other jurisdictions, the law does not require self-insured entities to provide uninsured motorist coverage.[9] Thus, where a self-insurer is not an "insurer" for the purposes of an UM statute,[10] a self-insured employer is not required to provide UM coverage on a vehicle used by an employee or to offer the employee such coverage.[11] Furthermore, the view has been followed that a certificate of self-insurance is not a "policy" for purposes of an UM statute,[12] and those who chose to comply with the state motor vehicle safety responsibility law by obtaining a self-insurance certificate do not have to provide UIM coverage.[13]

A self-insurance exclusion in an UIM coverage provision of an automobile insurance policy excluding a vehicle owned or operated by a self-insurer up to the extent that the bodily injury limits of liability established by financial responsibility were payable was void, since such exclusion denied coverage where the statute, by its terms, required coverage.[14]

Footnotes

1 ELRAC, Inc. v. Masara, 96 N.Y.2d 847, 729 N.Y.S.2d 60, 753 N.E.2d 855 (2001); Lowery v. Port Authority of Allegheny County, 914 A.2d 953 (Pa. Commw. Ct. 2006).

2 Twyman v. Robinson, 255 Ga. 711, 342 S.E.2d 313 (1986).

3 Twyman v. Robinson, 255 Ga. 711, 342 S.E.2d 313 (1986).

4 Geico v. City of Newark, 2009 WL 4981176 (N.J. Super. Ct. App. Div. 2009); Knox v. SEPTA, 81 A.3d 1016 (Pa. Commw. Ct. 2013).

5 Elrac, Inc. v. Exum, 73 A.D.3d 431, 901 N.Y.S.2d 19 (1st Dep't 2010), order aff'd, 18 N.Y.3d 325, 938 N.Y.S.2d 252, 961 N.E.2d 643 (2011).

6 Alzharani v. Pacific Intern. Services Corp., 82 Haw. 466, 923 P.2d 408 (1996).

7 Anderson v. Northwestern Bell Telephone Co., 443 N.W.2d 546 (Minn. Ct. App. 1989).

8 Garcia v. City of Bridgeport, 306 Conn. 340, 51 A.3d 1089 (2012).

9 Farmers Ins. Co., Inc. v. Southwestern Bell Telephone Co., 279 Kan. 976, 113 P.3d 258 (2005); Bercy v. St. Martin, 37 So. 3d 400 (La. Ct. App. 4th Cir. 2010), on reh'g, (Apr. 15, 2010) and writ denied, 45 So. 3d 1045 (La. 2010).

10 White by Scott v. Regional Transp. Dist., 735 P.2d 218 (Colo. App. 1987).

11 Lipof v. Florida Power & Light Co., 558 So. 2d 1067 (Fla. 4th DCA 1990), decision approved, 596 So. 2d 1005 (Fla. 1992).

12 Ponds ex rel. Poole v. Hertz Corp., 37 Kan. App. 2d 882, 158 P.3d 369 (2007); Ellis v. Rhode Island Public Transit Authority, 586 A.2d 1055 (R.I. 1991).

13 Willoughby v. City of New Haven, 254 Conn. 404, 757 A.2d 1083 (2000).

14 Kyrkos v. State Farm Mut. Auto. Ins. Co., 121 Wash. 2d 669, 852 P.2d 1078 (1993).

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I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

b. Construction, Effect, and Application of Statutes

§ 40. Applicability of uninsured and underinsured motorist laws to excess or umbrella policies

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2775, 2800

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Requirement that multicoverage umbrella insurance policy offer uninsured- or underinsured-motorist coverage equal to liability limits under umbrella provisions, 52 A.L.R.5th 451

"Excess" or "umbrella" insurance policy as providing coverage for accidents with uninsured or underinsured motorists, 2 A.L.R.5th 922

In some jurisdictions, the mandates of the applicable uninsured motorist (UM) statute apply to providers of excess coverage as well as providers of primary liability coverage,[1] although in other states an insurer has no duty to offer uninsured/underinsured motorist coverage as part of an umbrella policy.[2] However, while some courts have held that uninsured/underinsured motorist (UM/UIM) statutes do not apply to umbrella policies,[3] and some states have specifically provided in their UM statutes that umbrella policies are not included,[4] in other jurisdictions, an insurer issuing an umbrella policy is required to offer the insured UIM coverage.[5] An insurer's failure to offer UIM coverage in an umbrella policy, where mandated, results in the imputation of such coverage to the policy as a matter of law.[6]

Footnotes

1 Popham v. State Farm Mut. Ins. Co., 333 Md. 136, 634 A.2d 28 (1993); Gyori v. Johnston Coca-Cola Bottling Group, Inc., 76 Ohio St. 3d 565, 1996-Ohio-358, 669 N.E.2d 824 (1996).

2 Wilson v. Automobile Ins. Co. of Hartford, Conn., 293 Ga. 251, 744 S.E.2d 732 (2013); Progressive Northwestern Ins. Co. v. Weed Warrior Services, 2010-NMSC-050, 149 N.M. 157, 245 P.3d 1209 (2010). The term "issuance" in a statute relieving the insurer of the obligation to make uninsured motorist or underinsured motorist coverage available in connection with the issuance of a commercial umbrella or excess liability policy encompassed the renewal policy, and, thus, the excess insurer was not required to provide UM/UIM coverage or obtain a written rejection of it in the policy renewed after the effective date of the statute. Fireman's Fund Ins. Co. v. Ackerman, 56 N.E.3d 1209 (Ind. Ct. App. 2016), transfer denied, 62 N.E.3d 1201 (Ind. 2016).

3 Apodaca v. Allstate Ins. Co., 232 P.3d 253 (Colo. App. 2009), judgment aff'd, 255 P.3d 1099 (Colo. 2011). The Arkansas underinsured motorist statute did not require an insurance carrier to make underinsured motorist coverage available in conjunction with an umbrella insurance policy, as umbrella insurance was not "automobile liability insurance" under the statute. Economy Premier Assur. Co. v. Everhart, 623 F. Supp. 2d 988 (W.D. Ark. 2009).

4 Liberty Mut. Ins. Co. v. McLaughlin, 412 Mass. 492, 590 N.E.2d 679 (1992) (referring to statutes in Kansas and Florida).

5 Draayer v. Allen, 195 So. 3d 78 (La. Ct. App. 1st Cir. 2016).

6 Ormsbee v. Allstate Ins. Co., 176 Ariz. 109, 859 P.2d 732 (1993).

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I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

c. Requirements to Provide or Offer Coverage; Rejection

§ 41. Statutory requirement to provide or offer uninsured or underinsured automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2774, 2775, 2779(1)

A.L.R. Library

Rights and liabilities under "uninsured motorists" coverage, 79 A.L.R.2d 1252

Statutes in some states make uninsured motorist (UM) coverage mandatory in automobile liability policies,[1] although in other states, statutes merely require insurers to make the UM coverage available to automobile or motor vehicle liability policyholders.[2] Thus, in some states, UM coverage is mandatory in each automobile insurance policy issued in the state, unless such coverage is validly rejected[3] or waived[4] by the insured.[5] Or, as stated in some jurisdictions, since UM coverage can be rejected, it is not a form of mandatory insurance coverage.[6] In some states, the purchase of both uninsured motorist and underinsured motorist (UM/UIM) coverage is optional,[7] although an insurer writing automobile liability or motor vehicle liability policies must also make available to the named insured or offer him or her UIM coverage,[8] subject to the insured's rejection of such coverage.[9] Thus, UIM coverage may also be mandatory unless rejected by the insured in accordance with the

applicable statutory provisions.[10] However, some state statutes neither require an automobile insurer to include UIM coverage in its policies, nor even to offer such coverage to its insureds, UIM coverage in such jurisdictions being a matter of contract law, not public policy.[11] Also, some statutes require both the offer of a minimum required level of UM coverage as well as an offer of additional UM/UIM coverage.[12]

Observation:

A statutory requirement that the automobile insurer give the insured written notice of an offer to obtain uninsured/underinsured motorist coverage does not require the insurer to translate the written offer of such coverage into Spanish.[13]

The failure of an insurer to offer UM[14] or UIM[15] coverage where required to do so, may result in the insured acquiring such coverage by operation of law, although this is not always the case.[16]

Observation:

Generally, when UIM motorist coverage required by statute to be offered is implied in law under the applicable statute, the insured will be limited to the minimum amount referred to in the statute.[17]

A policy that does not provide the required coverage will be reformed to conform with statutory requirements.[18] However, a car lessee's assignee and assignee's automobile liability insurer had no duty to have or offer UM/UIM coverage on a leased vehicle that the lessee had a right to buy at the end of the lease term since the assignee's automobile and excess liability policies were not "automobile liability or motor vehicle liability policies of insurance."[19]

Footnotes

1 American Transit Ins. Co. v. Abdelghany, 80 N.Y.2d 162, 589 N.Y.S.2d 842, 603 N.E.2d 947 (1992); Wood v. Nunnery, 222 N.C. App. 303, 730 S.E.2d 222 (2012); WEA Ins. Corp. v. Freiheit, 190 Wis. 2d 111, 527 N.W.2d 363 (Ct. App. 1994).

2 Nieves v. North River Ins. Co., 49 So. 3d 810 (Fla. 4th DCA 2010); Phelps v. State Farm Mut. Auto. Ins. Co., 112 Nev. 675, 917 P.2d 944 (1996); Gyori v. Johnston Coca-Cola Bottling Group, Inc., 76 Ohio St. 3d 565, 1996-Ohio-358, 669 N.E.2d 824 (1996).

As to no-fault insurance, generally, see §§ 30 to 33.

3 Aetna Cas. & Sur. Co. v. McMichael, 906 P.2d 92 (Colo. 1995); Humm v. Aetna Cas. and Sur. Co., 656 A.2d 712 (Del. 1995); Hayes v. De Barton, 2016-541 La. App. 3 Cir. 2/15/17, 2017 WL 616461 (La. Ct. App. 3d Cir. 2017).

As to the sufficiency of and proof of rejection of uninsured or underinsured motorist coverage, see § 44.

4 State Farm Mut. Auto. Ins. Co. v. Harrington, 918 P.2d 1022 (Alaska 1996); United Nat. Ins. Co. v. DePrizio, 705 N.E.2d 455 (Ind. 1999); Melder v. State Farm Mut. Auto. Ins. Co., 162 So. 3d 438 (La. Ct. App. 3d Cir. 2015), writ denied, 178 So. 3d 569 (La. 2015).

5 Soseeah v. Sentry Ins., 808 F.3d 800, 93 Fed. R. Serv. 3d 771 (10th Cir. 2015) (applying New Mexico law).

6 Platt v. National General Ins. Co., 205 Ga. App. 705, 423 S.E.2d 387 (1992).

7 Pennsylvania Financial Responsibility Assigned Claims Plan v. English, 541 Pa. 424, 664 A.2d 84 (1995).

8 Wilks v. Manobianco, 237 Ariz. 443, 352 P.3d 912 (2015); Loar v. State Farm Mut. Auto. Ins. Co., 143 P.3d 1083 (Colo. App. 2006); Lopez v. United Auto. Ins. Co., 2012 UT 10, 274 P.3d 897 (Utah 2012).

9 Shelter Mut. Ins. Co. v. Irvin, 309 Ark. 331, 831 S.W.2d 135 (1992); Vieau v. American Family Mut. Ins. Co. and Acuity, 2006 WI 31, 289 Wis. 2d 552, 712 N.W.2d 661 (2006).

10 Quintano v. Mercury Casualty Co., 11 Cal. 4th 1049, 48 Cal. Rptr. 2d 1, 906 P.2d 1057 (1995); Wood v. Nunnery, 222 N.C. App. 303, 730 S.E.2d 222 (2012).

11 Featherston By and Through Featherston v. Allstate Ins. Co., 125 Idaho 840, 875 P.2d 937 (1994).

The statute requiring that an automobile insurance policy provide uninsured motorist (UM) coverage, without mentioning underinsured motorist (UIM) coverage, did not compel the insured to obtain, or the insurer to provide, UIM coverage. Broderick v. Dairyland Ins. Co., 2012 WY 22, 270 P.3d 684 (Wyo. 2012).

12 Humm v. Aetna Cas. and Sur. Co., 656 A.2d 712 (Del. 1995).

13 Ballesteros v. American Standard Ins. Co. of Wisconsin, 226 Ariz. 345, 248 P.3d 193 (2011).

14 Liberty Mut. Fire Ins. Co. v. McKnight, 125 F. Supp. 3d 602 (D.S.C. 2015); Gyori v. Johnston Coca-Cola Bottling Group, Inc., 76 Ohio St. 3d 565, 1996-Ohio-358, 669 N.E.2d 824 (1996).

15 Shelter Mut. Ins. Co. v. Irvin, 309 Ark. 331, 831 S.W.2d 135 (1992); Traynum v. Scavens, 416 S.C. 197, 786 S.E.2d 115 (2016).

16 Allstate Ins. Co. v. DeMichele, 2005 PA Super 382, 888 A.2d 834 (2005).

17 Ross v. United Services Auto. Ass'n, 320 Ark. 604, 899 S.W.2d 53 (1995).

18 State Farm Mut. Auto. Ins. Co. v. Harrington, 918 P.2d 1022 (Alaska 1996); Williams v. Nationwide Mut. Ins. Co., 174 N.C. App. 601, 621 S.E.2d 644 (2005).

As to construction of UM/UIM statutes, generally, see § 34.

19 Armentrout v. Tokio Marine & Fire Ins. Co., Ltd., 159 Ohio App. 3d 404, 2004-Ohio-7246, 824 N.E.2d 117 (11th Dist. Portage County 2004).

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I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

c. Requirements to Provide or Offer Coverage; Rejection

§ 42. Amount of offer of uninsured motorist coverage required

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2774, 2775, 2779(2)

A.L.R. Library

Rights and liabilities under "uninsured motorists" coverage, 79 A.L.R.2d 1252

Uninsured motorist (UM) statutes frequently require the insurer to offer UM coverage at least equal to the limit carried by the named insured for general liability coverage,[1] and to extend UM coverage to persons legally entitled to recover damages from an uninsured motorist, if the damages arise out of the ownership, maintenance, or use of the insured car,[2] with similar provisions applicable to the offering of underinsured motorist coverage.[3] Furthermore, some state statutes require insurers to provide the minimum UM coverage prescribed by the laws of the state in which the accident occurred.[4] However, in some jurisdictions UM coverage is not required in an amount equal to the liability coverage, and a rejection of UM coverage equal to liability coverage, may be made.[5]

Footnotes

1 Gaspard v. Safeway Ins. Co., 202 So. 3d 1128 (La. Ct. App. 1st Cir. 2016); Jordan v. Allstate Ins. Co., 2010-NMSC-051, 149 N.M. 162, 245 P.3d 1214 (2010); Unitrin Auto and Home Ins. Co. v. Rikard, 217 N.C. App. 393, 722 S.E.2d 510 (2011).
An excess insurer's only duty with respect to its offer of uninsured motorist coverage is to make available as a part of the application for such policy, and at the written request of an insured, uninsured motorist coverage in an amount equal to the bodily injury limits contained in the policy or $1 million. Nieves v. North River Ins. Co., 49 So. 3d 810 (Fla. 4th DCA 2010).

2 Spradlin v. State Farm Mut. Auto. Ins. Co., 650 So. 2d 1383 (Miss. 1995); Tata v. Nichols, 848 S.W.2d 649 (Tenn. 1993).

3 Ross v. United Services Auto. Ass'n, 320 Ark. 604, 899 S.W.2d 53 (1995); Isenhour v. Universal Underwriters Ins. Co., 341 N.C. 597, 461 S.E.2d 317 (1995).

4 American Transit Ins. Co. v. Abdelghany, 80 N.Y.2d 162, 589 N.Y.S.2d 842, 603 N.E.2d 947 (1992).

5 Insurance Co. of North America v. MacMillan, 945 F.2d 729, 20 Fed. R. Serv. 3d 455 (4th Cir. 1991) (applying Virginia law); Ayres v. United Services Auto. Ass'n, 160 P.3d 128 (Alaska 2007).

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7 Am. Jur. 2d Automobile Insurance § 43

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Automobile Insurance
Barbara J. Van Arsdale, J.D.; James Buchwalter, J.D.; Lonnie E. Griffith, Jr., J.D.; Janice Holben, J.D.; Sonja Larsen, J.D.; Anne E. Melley, J.D., LL.M., of the staff of the National Legal Research Group, Inc.; Mary Babb Morris, J.D., of the staff of the National Legal Research Group, Inc.; and Karen L. Schultz, J.D.

I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

c. Requirements to Provide or Offer Coverage; Rejection

§ 43. When uninsured or underinsured automobile coverage must be offered

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2775

A.L.R. Library

Requirement that multicoverage umbrella insurance policy offer uninsured- or underinsured-motorist coverage equal to liability limits under umbrella provisions, 52 A.L.R.5th 451

Uninsured motorist (UM) coverage must be offered in some jurisdictions at the time of the purchase of liability insurance,[1] for a vehicle principally garaged in that jurisdiction.[2] Some statutes requiring an automobile insurer to offer UM coverage to an applicant in an amount equal to the policy limits for liability coverage do not apply only to first-time applicants for insurance with the insurer, but rather apply to existing insureds in connection with policy renewals.[3]

The obligation to offer uninsured/underinsured motorist (UM/UIM) coverage may extend to umbrella or excess insurers who insure against a loss arising out of the ownership, maintenance, or use of a motor vehicle.[4] Under some statutes, where the named insured has rejected coverage in connection with a policy previously issued to him or her by the same insurer, such coverage need not be provided in an automobile insurance policy or supplemental to it, unless the named insured requests such

coverage in writing.[5] Requirements of a written rejection of UM coverage apply in some jurisdictions with regard to a new policy or the reissuance of a policy with a material change in or departure from the provisions of the prior policy,[6] and upon any reinstatement, substitution, amendment, alteration, modification, transfer, or replacement thereof by the same insurer, UM coverage, previously rejected, may not be required to be provided by the insurer unless the coverage has subsequently requested in writing by the named insured.[7] In determining whether a substitute automobile insurance policy requires a new UM selection form, the "material change" test is utilized, with the question being whether the change in the policy is material to the initial selection or waiver of UM coverage and, thus, triggers the need to execute a new selection/rejection UM waiver.[8] In some states, neither the addition of vehicles nor the addition of a newly licensed driver to an automobile policy constitutes material changes to the policy, so as to require the insurer to make a new offer of optional UM/UIM coverage.[9] In others, the addition of a vehicle to an existing policy constitutes a new policy distinct from the original and, as such, some UM statutes require that UM coverage be offered in conjunction with the coverage of the new vehicle,[10] as does changes in coverage levels.[11]

Some statutes have required an insurer, prior to the time a policy is issued or renewed, to notify the insured of the right to obtain UM/UIM coverage at a level higher than the minimum liability limits per accident,[12] although not all jurisdictions impose this obligation.[13]

In some states, UIM coverage may be obtained and is required to be provided only if the policyholder has liability insurance in excess of the minimum statutory requirement for such insurance.[14]

Observation:

Where a section of an UM statute providing that any rejection of UM coverage in one policy will continue to be effective in any other policy issued by the same insurer which extends, changes, supersedes, or replaces the original policy is not limited in its effect to replacement policies issued to the same insured that originally rejected such coverage, a grandfather's rejection of UM coverage in a policy issued to him and his granddaughter as named insureds continued to be effective, following the grandfather's transfer of the car, in a policy issued to the granddaughter alone.[15]

Footnotes

1 Featherston By and Through Featherston v. Allstate Ins. Co., 125 Idaho 840, 875 P.2d 937 (1994); Ferreira v. Integon Nat. Ins. Co., 809 A.2d 1098 (R.I. 2002).

2 Berg v. Liberty Mut. Ins. Co., 319 F. Supp. 2d 933 (N.D. Iowa 2004) (applying Iowa law); Strochak v. Federal Ins. Co., 717 So. 2d 453 (Fla. 1998).

3 Nicholson v. State Farm Mut. Auto. Ins. Co., 409 Ill. App. 3d 282, 350 Ill. Dec. 874, 949 N.E.2d 666 (2d Dist. 2010).

4 United Nat. Ins. Co. v. DePrizio, 705 N.E.2d 455 (Ind. 1999); American Mfrs. Mut. Ins. Co. v. Hagler, 132 N.C. App. 204, 511 S.E.2d 28 (1999).
As to applicability of statutory uninsured and underinsured motorist statutes to excess or umbrella policies, see § 40.

5 Stacy v. Nationwide Mut. Ins. Co., 125 Ohio App. 3d 658, 709 N.E.2d 519 (6th Dist. Erie County 1998); Government Employees Ins. Co. v. Hall, 260 Va. 349, 533 S.E.2d 615 (2000).
Under an Arkansas statute, after a named insured rejects UIM coverage, the insurer is not required to notify any insured in any renewal, reinstatement, substitute, amended, on replacement policy as to the availability of such coverage. Warford v. State Farm Mut. Auto. Ins. Co. (State Farm Ins. Companies), 69 F.3d 860 (8th Cir. 1995) (applying Arkansas law).

6 American Commerce Ins. Co. v. Ensley, 153 Wash. App. 31, 220 P.3d 215 (Div. 3 2009).
As to requirements for sufficient offer or rejection of coverage, see § 44.

7 Humm v. Aetna Cas. and Sur. Co., 656 A.2d 712 (Del. 1995); Allstate Ins. Co. v. Kaneshiro, 93 Haw. 210, 998 P.2d 490 (2000).

8 Richardson v. Lott, 928 So. 2d 567 (La. Ct. App. 1st Cir. 2006), writ denied, 927 So. 2d 327 (La. 2006).

9 Lee v. Government Employees Ins. Co., 911 F. Supp. 2d 947 (D. Haw. 2012), on reconsideration in part, 2013 WL 690609 (D. Haw. 2013), aff'd, 620 Fed. Appx. 610 (9th Cir. 2015) and aff'd, 620 Fed. Appx. 610 (9th Cir. 2015).
An insurer was not required to obtain an underinsured motorist rejection form for each vehicle added to a multivehicle automobile policy, and thus the insured's signing of a rejection of underinsured motorist protection form remained valid in regard to a vehicle later added pursuant to the policy's newly acquired vehicle clause. Glazer v. Nationwide Mut. Ins. Co., 872 F. Supp. 2d 396 (M.D. Pa. 2012).

10 Withrow v. Pickard, 1995 OK 120, 905 P.2d 800 (Okla. 1995).

11 American Commerce Ins. Co. v. Ensley, 153 Wash. App. 31, 220 P.3d 215 (Div. 3 2009).

12 Allstate Ins. Co. v. Parfrey, 830 P.2d 905 (Colo. 1992).

13 Kaercher v. Sater, 155 P.3d 437 (Colo. App. 2006).

14 Hollar By and Through Hollar v. Hawkins, 119 N.C. App. 795, 460 S.E.2d 337 (1995).

15 Craft v. State Farm Mut. Auto. Ins. Co., 14 Cal. App. 4th 1284, 18 Cal. Rptr. 2d 293 (5th Dist. 1993).

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7 Am. Jur. 2d Automobile Insurance § 44

American Jurisprudence, Second Edition | May 2021 Update

Automobile Insurance

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I. In General

E. Insurance Required by Statute

4. Uninsured and Underinsured Motorist Coverage (UM/UIM)

c. Requirements to Provide or Offer Coverage; Rejection

§ 44. Requirements for sufficient offer or rejection of uninsured or underinsured automobile coverage

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2775, 2779(1)

Statutes sometimes require an offer of underinsurance motorist (UIM) coverage to be made in writing.[1] Some uninsured motorist (UM) statutes require that the offer of UM coverage be made by way of a statutorily specified form, which must be provided to a proposed insured in a writing separately from the application and must read as specified by statute.[2] Where a statute has not specifically required an offer of uninsured motorist coverage to be in writing, the requirement that there can be no rejection absent a written offer of such coverage from the insurance provider has been judicially imposed, based on the reasoning that the spirit of the statute is best served by requiring the offer to be in writing.[3]

A statute requiring that insurers both "offer" and "make available" UIM coverage has been interpreted as not requiring the offer to contain an explanation of the nature of UIM insurance,[4] although some states with similar statutes have required insurers to explain the nature of UIM coverage to their policyholders.[5] In this regard, an insurer may be required to give notification of the offer of UM coverage in a "commercially reasonable" manner,[6] so as to provide the insured with adequate information to make an intelligent decision.[7]

In addition, a waiver[8] or rejection[9] of an offer of UM[10] or UIM[11] coverage generally must be in writing, in the particular form specified by statute.[12] However, while statutory provisions in some states require a written rejection of the minimum required level of UM coverage, provisions requiring insurance carriers to offer additional UM/UIM coverage, do not always provide

that an insured's rejection of that offer will be valid only if it is in writing, so that the insurance carrier fulfills its duty when it makes a meaningful offer to the insured.[13]

Any waiver of UM coverage must be clear and unmistakable.[14] However, even clear expressions of a desire not to have UM coverage do not necessarily constitute valid rejections if the expressions of rejection do not meet the formal requirements of law.[15]

Where an offer of optional UM or UIM coverage is required by statute,[16] an insurer has the burden of proving that a meaningful offer was made[17] and that any rejection of such offer by the insured was knowing and informed.[18] The burden is not on the insured to request information about uninsured motorist and underinsured motorist coverage; insureds cannot make an informed decision about UM/UIM coverage without first receiving information from the automobile insurer.[19] If an automobile insurer provides and the insured signs an approved uninsured motorist or underinsured motorist selection form, the insurer has satisfied the statutory requirement to make available and by written notice offer UM/UIM coverage, eliminating fact questions concerning whether UM/UIM coverage was sufficiently offered by the insurer and whether the terms of the offer were understood.[20]

Insurance companies bear the burden of showing that any rejection of UM coverage was knowingly made by the customer.[21] In order for a rejection of UM coverage to be expressly and knowingly made, such rejection must be in writing and must have been received by the insurance company prior to the commencement of the policy year.[22] By statute in some jurisdictions, a knowing and intelligent rejection of optional UM and UIM coverage by any named insured under an insurance policy creates a presumption that all named insureds under the policy received an effective offer of the optional coverages and that such person exercised a knowing and intelligent rejection of such offer; the named insured's rejection is binding on all persons insured under the policy.[23] Thus, some jurisdictions require the rejection or selection of lower limits to be executed by the named insured.[24] Sometimes, an agent may waive uninsured motorist coverage on behalf of a principal so long as the insurer proves the existence of an agency relationship, whether actual or apparent.[25]

In some jurisdictions, the named insured must reject UM/UIM coverage in a manner consistent with the requirements imposed by the state superintendent of insurance, or the UM coverage will be read into the insured's automobile liability insurance policy regardless of the intent of the parties or the fact that a premium has not been paid.[26] Under some state statutes, with respect to a new policy, unless the insured rejects in writing an amount of UM coverage in addition to the statutory minimum by notifying the insurer in the manner provided by statute, the amount applicable to liability insurance coverage will apply.[27]

Under a statute requiring an insurer, prior to the time a policy is issued or renewed, to notify the insured of the right to obtain UM/UIM coverage at a level higher than the minimum liability limits per accident,[28] an insurer's duty of notification and offer must be performed in a manner reasonably calculated to permit the potential purchaser to make an informed decision on whether to purchase UM/UIM coverage higher than the minimum statutory liability limits.[29] When an insurer fails to offer in writing or obtain a written or obtain a written rejection of UM coverage, such that this coverage is imputed to an insured's policy as a matter of law, the mandate of the UM statute is satisfied by the imputation of the minimum limits of the UM coverage required by the statute.[30]

A statute providing that notice of cancellation of insurance is deemed given when it is addressed to the insured's last address of record, and then deposited in a mail depository of the U.S. Postal Service, does not apply to a rejection notice of UM/UIM coverage, at least where there are separate statutory provisions governing notices of rejections of UM/UIM coverage.[31]

CUMULATIVE SUPPLEMENT

Cases:

Under Florida law, named insured could not orally waive underinsured motorist (UIM) coverage, but could do so only in writing on approved form prior to accident injuring employee as passenger in named insured's car; statutory requirement of waiver in writing was not merely a shifting evidentiary standard, and allowing insured to orally waive right to UIM coverage would frustrate statutory purpose and render meaningless right to have coverage waived only in writing. Fla. Stat. Ann. § 627.727(1). Berman v. Liberty Mutual Insurance Company, 359 F. Supp. 3d 1158 (M.D. Fla. 2019).

Wife's waiver of personal injury protection (PIP) coverage under automobile insurance policy for her and her husband was enforceable under Washington law. Wash. Rev. Code Ann. §§ 48.22.005(9), 48.22.085. Quintana v. USAA Life Insurance Company, 434 F. Supp. 3d 932 (W.D. Wash. 2020).

Motorist did not affirmatively choose $25,000 limit when she requested uninsured/underinsured motorist (UM) coverage and, thus, she was entitled to coverage with limit of $100,000 equal to policy's bodily injury liability coverage in her personal injury action against driver of second vehicle after motor vehicle collision; while, in response to insurer's request for admission that motorist effected number of changes to policy, including UM coverage added in statutory coverage amounts, she responded that it was admitted, response could interpreted only as admitting that UM limits listed on insurer's declaration page were statutory coverage amounts, not that those limits actually governed policy, as she also denied that she affirmatively chose UM coverage limits in amount less than limits of liability coverage, and declarations page alone was insufficient to show affirmative choice of lesser amount of coverage. Ga. Code Ann. §§ 9-11-36(a)(1), (b), 33-7-11(a)(1, 3). Government Employees Insurance Company v. Morgan, 341 Ga. App. 396, 800 S.E.2d 612 (2017).

[END OF SUPPLEMENT]

Footnotes

1 State Farm Mut. Auto. Ins. Co. v. Hughes, 438 F. Supp. 2d 526 (E.D. Pa. 2006); Tallent v. National General Ins. Co., 185 Ariz. 266, 915 P.2d 665 (1996).

2 Phoenix Indem. Ins. Co. v. Pulis, 2000-NMSC-023, 129 N.M. 395, 9 P.3d 639 (2000); Floyd v. Nationwide Mut. Ins. Co., 367 S.C. 253, 626 S.E.2d 6 (2005).

3 Gyori v. Johnston Coca-Cola Bottling Group, Inc., 76 Ohio St. 3d 565, 1996-Ohio-358, 669 N.E.2d 824 (1996).

4 Tallent v. National General Ins. Co., 185 Ariz. 266, 915 P.2d 665 (1996).

5 Mollena v. Fireman's Fund Ins. Co. of Hawaii, Inc., 72 Haw. 314, 816 P.2d 968 (1991); State Farm Mut. Auto. Ins. Co. v. Wannamaker, 291 S.C. 518, 354 S.E.2d 555 (1987).

6 Traynum v. Scavens, 416 S.C. 197, 786 S.E.2d 115 (2016); Kalwar v. Liberty Mut. Ins. Co., 203 W. Va. 2, 506 S.E.2d 39 (1998).

7 Curry v. Great Northwest Ins. Co., 2014-NMCA-031, 320 P.3d 482 (N.M. Ct. App. 2013); Bias v. Nationwide Mut. Ins. Co., 179 W. Va. 125, 365 S.E.2d 789 (1987).

8 State Farm Mut. Auto. Ins. Co. v. Harrington, 918 P.2d 1022 (Alaska 1996).

9 Soseeah v. Sentry Ins., 808 F.3d 800, 93 Fed. R. Serv. 3d 771 (10th Cir. 2015) (applying New Mexico law); Aetna Cas. & Sur. Co. v. McMichael, 906 P.2d 92 (Colo. 1995); Masler v. State Farm Mut. Auto. Ins. Co., 894 S.W.2d 633 (Ky. 1995).

10 Casey v. Phelan Ins. Agency, Inc., 431 F. Supp. 2d 888, 70 Fed. R. Evid. Serv. 130 (N.D. Ind. 2006); Harper v. Direct General Ins. Co., 2 So. 3d 418 (La. 2009).

11 State Farm Mut. Auto. Ins. Co. v. Harrington, 918 P.2d 1022 (Alaska 1996); Johnson v. Safeway Ins. Co. of Louisiana, 76 So. 3d 653 (La. Ct. App. 3d Cir. 2011).

12 Craft v. State Farm Mut. Auto. Ins. Co., 14 Cal. App. 4th 1284, 18 Cal. Rptr. 2d 293 (5th Dist. 1993); Banaszak v. Progressive Direct Ins. Co., 3 A.3d 1089 (Del. 2010), as corrected (Sept. 3, 2010).

A waiver form for uninsured motorist coverage did not need the typed name of the person who signed the rejection on behalf of a corporate named insured, and thus, the form was valid with the printed name of the insured and signature of the representative. Banquer v. Guidroz, 8 So. 3d 559 (La. 2009).

13 Humm v. Aetna Cas. and Sur. Co., 656 A.2d 712 (Del. 1995).

An insurance company's failure to use the Insurance Commissioner's prescribed forms for offering optional UIM coverage results in the loss of the statutory presumption that the offer was effective and that the insured's rejection of coverage was knowing and intelligent and a reversion to the common-law standards under which an insurer is required to prove that: (1) it made a commercially reasonable offer of coverage to the insured, and (2) the insured's rejection of such coverage was knowing and intelligent. Thomas v. McDermitt, 232 W. Va. 159, 751 S.E.2d 264 (2013).

14 Washington v. Savoie, 634 So. 2d 1176 (La. 1994).

An uninsured/underinsured motorist coverage rejection complied with all of the required guidelines, even though the form lacked the insurance company's name, and thus, the form signed by the insured validly waived UM coverage, where the insured had initialed the selection or rejection of coverage chosen, filled in the amount of coverage selected for each person and each accident, printed the name of the named insured or legal representative, signed the name of the named insured or legal representative, filled in the policy number, and filled in the date. Gingles v. Dardenne, 4 So. 3d 799 (La. 2009).

15 Roger v. Estate of Moulton, 513 So. 2d 1126 (La. 1987).

16 As to nature and scope of statutory uninsured and underinsured motorist coverage, see § 34.

17 Traynum v. Scavens, 416 S.C. 197, 786 S.E.2d 115 (2016).

18 Cox v. Amick, 195 W. Va. 608, 466 S.E.2d 459 (1995).

19 Sinclair v. Zurich American Ins. Co., 141 F. Supp. 3d 1162 (D.N.M. 2015).

20 Wilks v. Manobianco, 237 Ariz. 443, 352 P.3d 912 (2015).

21 Kinsey v. Pacific Employers Ins. Co., 277 Conn. 398, 891 A.2d 959 (2006); Washington v. Savoie, 634 So. 2d 1176 (La. 1994).

22 Lachney v. Hanover Ins. Co., 927 So. 2d 380 (La. Ct. App. 1st Cir. 2005), writ denied, 925 So. 2d 1238 (La. 2006); Gyori v. Johnston Coca-Cola Bottling Group, Inc., 76 Ohio St. 3d 565, 1996-Ohio-358, 669 N.E.2d 824 (1996).

23 Cox v. Amick, 195 W. Va. 608, 466 S.E.2d 459 (1995).

Written consent of all the named insureds on a commercial fleet policy is not a prerequisite to a reduction in UM coverage to limits less than the liability limits. Frantz v. U.S. Fleet Leasing, Inc., 245 Conn. 727, 714 A.2d 1222 (1998).

The owner of a rental car and rental car company, both of which were added to an automobile insurance policy as named insureds after the policy commenced, were not required by statute to make a written rejection of uninsured motorist coverage, as the predecessor insured of the owner and company, as the original named insured of the policy, had already done so. Lynch v. Spirit Rent-A Car, Inc., 965 A.2d 417 (R.I. 2009).

24 Johnson v. First Acceptance Insurance Company, Inc., 2017 WL 65326 (Ala. Civ. App. 2017); Colonial Penn Ins. Co. v. Bryant, 245 Conn. 710, 714 A.2d 1209 (1998); Shirey v. Barton, 938 So. 2d 774 (La. Ct. App. 1st Cir. 2006).

25 Bouffard v. State Farm Fire & Cas. Co., 162 N.H. 305, 27 A.3d 682 (2011).

26 Shirey v. Barton, 938 So. 2d 774 (La. Ct. App. 1st Cir. 2006); Kaiser v. DeCarrera, 1996-NMSC-050, 122 N.M. 221, 923 P.2d 588 (1996).

As to statutory requirement to provide or offer uninsured or underinsured automobile insurance, see § 41.

27 Insurance Co. of North America v. MacMillan, 945 F.2d 729, 20 Fed. R. Serv. 3d 455 (4th Cir. 1991) (interpreting Virginia law); United Nat. Ins. Co. v. DePrizio, 705 N.E.2d 455 (Ind. 1999).

28 As to when uninsured or underinsured automobile coverage must be provided or offered, see § 43.

29 Allstate Ins. Co. v. Parfrey, 830 P.2d 905 (Colo. 1992); Government Employees Ins. Co. v. Douglas, 654 So. 2d 118 (Fla. 1995).

30 May v. National Union Fire Ins. Co. of Pittsburgh, Pennsylvania, 1996 OK 52, 918 P.2d 43 (Okla. 1996).

31 Kaiser v. DeCarrera, 1996-NMSC-050, 122 N.M. 221, 923 P.2d 588 (1996).

As to requirements for notice of termination of automobile insurance, generally, see § 53.

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Automobile Insurance

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I. In General

F. Coverage as Affected by Death of Insured

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Insurance 2648, 2660.5 to 2667

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance
A.L.R. Index, Automobile Collision Insurance
A.L.R. Index, Automobile Insurance
West's A.L.R. Digest, Insurance 2648, 2660.5 to 2667

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7 Am. Jur. 2d Automobile Insurance § 45

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Automobile Insurance

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I. In General

F. Coverage as Affected by Death of Insured

1. Effect of Death of Named Insured

§ 45. Termination of automobile insurance coverage due to death of named insured

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2648, 2660.5

A.L.R. Library

Automobile insurance: Coverage as extending beyond death of named insured, 30 A.L.R.3d 1047

The death of the named insured on an automobile insurance policy will terminate the coverage of the policy,[1] in the absence of contrary language in the policy itself,[2] as, for example, a policy provision extending coverage in such circumstances,[3] or in an applicable statute.[4] Absent a policy provision extending coverage, an automobile liability policy lapses on the death of the named insured.[5] However, a provision that the policy will be void in case of termination of the interest of the insured other than by his or her death implies that the obligation of the insurer is not necessarily terminated by the death of the named insured; even so, such a provision does not apply where no executor or administrator has been appointed.[6] Furthermore, an alternate executor is not entitled under such a provision to the protection of the policy prior to probate of the will and his or her appointment as executor.[7] The fact that the premium has been paid upon the policy for a period which extends beyond the death of the named insured does not, on equitable considerations, justify a court in construing a policy so as to extend the coverage during the full term of the policy if the terms of the contract are not susceptible of such a construction.[8]

However, insurance companies sometimes insert in their automobile policies provisions for the extension of their coverage, upon timely notice of the death of the named insured, to the legal representatives of the named insured, and, pending the qualification of such representative, for a limited period, to any person having proper temporary control of the automobile.[9]

Footnotes

1 Antone v. New Amsterdam Cas. Co., 335 Pa. 134, 6 A.2d 566 (1939).

2 Wilkins v. Inland Mut. Ins. Co., 253 F.2d 489 (4th Cir. 1958) (applying Maryland law).

3 Oroian v. Allstate Ins. Co., 62 Md. App. 654, 490 A.2d 1321 (1985).
As to policy provisions providing for extended coverage upon death of insured, see §§ 48, 49.

4 Wilkins v. Inland Mut. Ins. Co., 253 F.2d 489 (4th Cir. 1958) (applying Maryland law).
As to the death of a party as terminating a contract if the contract is of a personal nature, generally, see Am. Jur. 2d, Contracts § 521.

5 Maryland Auto. Ins. Fund v. John, 198 Md. App. 202, 16 A.3d 1008 (2011).

6 Collins v. Northwest Cas. Co., 180 Wash. 347, 39 P.2d 986, 97 A.L.R. 1235 (1935).

7 Collins v. Northwest Cas. Co., 180 Wash. 347, 39 P.2d 986, 97 A.L.R. 1235 (1935).

8 Collins v. Northwest Cas. Co., 180 Wash. 347, 39 P.2d 986, 97 A.L.R. 1235 (1935).

9 Wilkins v. Inland Mut. Ins. Co., 253 F.2d 489 (4th Cir. 1958) (applying Maryland law).

7 Am. Jur. 2d Automobile Insurance § 46

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Automobile Insurance

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I. In General

F. Coverage as Affected by Death of Insured

1. Effect of Death of Named Insured

§ 46. Coverage of household members, relatives, or family members under automobile insurance policy after death of named insured

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2648, 2661

A.L.R. Library

Who is "member" or "resident" of same "family" or "household" within no-fault or uninsured motorist provisions of motor vehicle insurance policy, 66 A.L.R.5th 269

Automobile insurance: Coverage as extending beyond death of named insured, 30 A.L.R.3d 1047

Automobile liability policies customarily provide primary coverage not only for the named insured, but also for members of the named insured's household.[1] Such a provision does not protect a member of the household using the car after the death of the named insured, since the named insured's death brings the social unit designated as his or her household to an end, even though the member remains in the home pending assumption of control of the personal property by the executor of the deceased insured.[2] However, a household member who had the insured's permission to use the vehicle prior to the insured's death, and who continues to use it thereafter, may be covered under a clause providing continued coverage for one having proper temporary custody of the vehicle after the insured's death.[3]

Automobile liability policies may extend protection automatically to the spouse of the insured, whether the original named insured is then living or dead.[4] In this regard, for example, where an automobile insurance policy provided that the word "insured," wherever used, included both the named insured and his "spouse," coverage extended to the surviving wife after the death of the named insured, despite the insurer's contention that the terminology "spouse" was inapplicable to the wife of the named insured after his death on the ground that she was no longer a "spouse" but merely a "widow."[5]

In a wrongful death case, upon the named insured's wrongful death, her minor children became insureds entitled to make a first-party claim for uninsured motorist benefits against her automobile policy, where the parties agreed that the policy obligated the insurer to pay its UM coverage to the named insured's statutory wrongful death beneficiaries and that the children were members of the class of the statutory wrongful death beneficiaries.[6] However, heirs of an insured who was fatally struck by an underinsured drunk driver were not entitled to payment for wrongful death under the underinsured motorist coverage in the insured's automobile insurance policy, where the heirs were not named insureds under the policy, the insured's own cause of action against the drunk driver abated upon the insured's death, and the UIM provision only paid damages to which an insured was entitled.[7]

Footnotes

1 As to coverage of household residents or members, see § 219.

2 Grinnell Select Ins. Co. v. Continental Western Ins. Co., 639 N.W.2d 31 (Iowa 2002); Collins v. Northwest Cas. Co., 180 Wash. 347, 39 P.2d 986, 97 A.L.R. 1235 (1935).

3 Maryland Auto. Ins. Fund v. John, 198 Md. App. 202, 16 A.3d 1008 (2011).
As to persons to whom extended coverage applies after death of named insured, see § 49.

4 Wilkins v. Inland Mut. Ins. Co., 253 F.2d 489 (4th Cir. 1958).

5 Campbell v. Panicali, 151 N.Y.S.2d 524 (Sup 1956).

6 Braughton v. Esurance Insurance Company, 466 S.W.3d 1 (Mo. Ct. App. W.D. 2015), reh'g and/or transfer denied, (Apr. 28, 2015) and transfer denied, (Aug. 18, 2015).

7 Farm Bureau Mut. Ins. Co. of Idaho v. Eisenman, 153 Idaho 549, 286 P.3d 185 (2012).

7 Am. Jur. 2d Automobile Insurance § 47

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Automobile Insurance

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I. In General

F. Coverage as Affected by Death of Insured

1. Effect of Death of Named Insured

§ 47. Coverage under policy provision granting permission to use vehicle after death of insured; omnibus clause

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2660.5, 2662 to 2667

A.L.R. Library

Automobile insurance: Coverage as extending beyond death of named insured, 30 A.L.R.3d 1047

Where attempts have been made to establish automobile insurance coverage as to one operating an automobile after the named insured's death by virtue of an omnibus clause provision extending coverage to the named insured and anyone using the automobile with the permission of the named insured, the permission granted by the named insured during his or her lifetime to use the automobile ceases at his or her death, thus precluding coverage under that clause.[1] In support of this view, only the executor or administrator of the estate has the right to grant permission to use the automobile after the death of the named insured,[2]

Footnotes

1 Inland Mut. Ins. Co. v. Peterson, 148 F. Supp. 392 (D. Md. 1957), judgment aff'd, 253 F.2d 489 (4th Cir. 1958); New Century Cas. Co. v. Chase, 39 F. Supp. 768 (S.D. W. Va. 1941).
As to omnibus clauses, generally, see §§ 220 to 234.

2 Inland Mut. Ins. Co. v. Peterson, 148 F. Supp. 392 (D. Md. 1957), judgment aff'd, 253 F.2d 489 (4th Cir. 1958).

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I. In General

F. Coverage as Affected by Death of Insured

2. Coverage Under Policy Specifically Providing for Extended Coverage Upon Death of Insured

§ 48. Requirement of timely notice of death for automobile insurance coverage extending beyond death of named insured

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2648, 2663

A.L.R. Library

Automobile insurance: Coverage as extending beyond death of named insured, 30 A.L.R.3d 1047

Policy provisions granting extended coverage after the insured's death may make such coverage contingent upon the giving of timely notice of such death to the insurer,[1] and the period of time for giving notice is not lessened merely because the policy itself may have expired during that period.[2]

If there has been a failure to give the insurer notice of the named insured's death within the specified period, the view generally has been taken that, absent a statute nullifying the notice requirement, there can be no extended coverage under the policy.[3] However, there is authority to the contrary, that the absence of notification within the period specified in the policy did not defeat coverage, on the ground that the policy extended automatic coverage for the stated period.[4]

Under certain circumstances, an insurer may waive its right to defend against a claim on the ground that it failed to receive timely notice of the named insured's death. Thus, where an insurance company, through its agent, had actual knowledge of the insured's

death, but continued to treat the policy as being alive and in force, it waived any defense that the company may otherwise have had based upon the expiration of the policy through lack of notice.[5] Thus, formal notice by the legal representative of the deceased insured, or one speaking for the deceased's heirs, is not necessary for the extension of coverage beyond the death of the insured when the insurer, by some other means, becomes aware of the insured's death.[6]

Where a policy provides that it will cover anyone having proper custody of the car if written notice of death is given the insurer within 60 days, unless the policy is canceled, only the deceased's legal representatives (or possibly the joint action of his distributees) could effectively cancel the policy, so that despite a purported cancellation by one having custody of the car, resulting in the refund of unearned premium to such custodian, an accident after such purported cancellation, but within the 60-day period, was covered by the policy.[7]

Footnotes

1 Wilkins v. Inland Mut. Ins. Co., 253 F.2d 489 (4th Cir. 1958).

2 Stewart v. Commerce Ins. Co. of Glen Falls, N.Y., 114 Utah 278, 198 P.2d 467 (1948).

3 Wilkins v. Inland Mut. Ins. Co., 253 F.2d 489 (4th Cir. 1958) (applying Maryland law); Whirry v. State Farm Mut. Auto. Ins. Co. of Bloomington, Ill., 263 Wis. 322, 57 N.W.2d 330 (1953).

4 National Sur. Corp. v. Klein, 3 Misc. 2d 876, 156 N.Y.S.2d 744 (Sup 1956).

5 American Emp. Ins. Co. v. Brock, 215 S.W.2d 370 (Tex. Civ. App. Dallas 1948), writ refused n.r.e.

6 Stewart v. Commerce Ins. Co. of Glen Falls, N.Y., 114 Utah 278, 198 P.2d 467 (1948).

7 Bornas v. Standard Acc. Ins. Co. of Detroit, Mich., 5 A.D.2d 96, 171 N.Y.S.2d 947 (4th Dep't 1958).

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I. In General

F. Coverage as Affected by Death of Insured

2. Coverage Under Policy Specifically Providing for Extended Coverage Upon Death of Insured

§ 49. Persons to whom extended coverage applies after death of named insured; legal representatives of insured

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2648, 2660.5

A.L.R. Library

Automobile insurance: Coverage as extending beyond death of named insured, 30 A.L.R.3d 1047

Automobile insurance policies providing for extended coverage after the death of the named insured may extend such coverage to the named insured's legal representative, and, pending appointment of such representative, to persons having proper temporary custody of the automobile.[1] For this purpose, the view has been followed that the term "legal representative" refers to the "personal representative" of the deceased insured.[2] However, the term "personal representative" is sufficiently broad to cover all persons who, with respect to the property of a deceased, stand in his or her place and represent his or her interests, whether they are transferred to them by his or her act or by the operation of law.[3] However, once the vehicle passes from the estate of the deceased to a person who thereafter is the owner of the vehicle, insurance coverage ceases.[4]

In some cases, such extended coverage may apply only to the legal representative, and only where he or she is acting within the scope of his or her duties as such.[5] Thus, under such a provision, no coverage existed for an accident involving a vehicle whose insured owner had died, where the vehicle was not being operated on affairs of the insured's estate at time of accident.[6]

Under automobile insurance policy provisions extending coverage, after the insured's death, to persons having property temporary custody of the named insured's vehicle, the term "proper" means "not illegal," and "temporary" custody refers to use until such time as there is an appointment and qualification of a legal representative.[7] Under such a provision, a member of the deceased insured's household, who had permission to use the vehicle prior to the death of the insured, and continued to use it thereafter was a person having proper temporary custody of the vehicle within the meaning of the policy.[8] There is coverage, for example, for an insured's sister who lived in the insured's home at the time of the insured's death and was an insured under the automobile insurance policy between the time of the insured's death and expiration of the policy, since the policy provided coverage for the insured's relative, defined as a person residing in the same household as the insured and related to the insured by blood, and provided that if the named insured died, the policy would provide coverage until the end of the policy period for persons covered under the policy on the date of the named insured's death.[9] However, such coverage lapsed when the policy period ended following the insured's death; coverage under the policy after the insured's death was temporary and limited because the policy's rates were based upon the named insured's risk, not the risk of the sister, a temporary driver.[10]

There is authority for the view that the person to whom the deceased insured bequeathed his or her automobile was "in proper temporary custody" of such vehicle where it was delivered to that person, even though the will had not yet been probated.[11]

Footnotes

1 Government Emp. Ins. Co. v. Wineteer, 409 F.2d 1333 (10th Cir. 1968).

2 New Century Cas. Co. v. Chase, 39 F. Supp. 768 (S.D. W. Va. 1941).

3 Merchants Mut. Cas. Co. v. Egan, 91 N.H. 368, 20 A.2d 480, 135 A.L.R. 745 (1941).

4 Litz v. State Farm Mut. Auto. Ins. Co., 58 Tenn. App. 585, 435 S.W.2d 124 (1968).

5 Federated Mut. Implement & Hardware Ins. Co. v. Eng, 178 N.W.2d 321 (Iowa 1970); Oroian v. Allstate Ins. Co., 62 Md. App. 654, 490 A.2d 1321 (1985).

6 Oroian v. Allstate Ins. Co., 62 Md. App. 654, 490 A.2d 1321 (1985).

7 David v. Houston Fire & Cas. Ins. Co., 192 So. 2d 583 (La. Ct. App. 3d Cir. 1966), writ refused, 250 La. 100, 194 So. 2d 98 (1967).

8 David v. Houston Fire & Cas. Ins. Co., 192 So. 2d 583 (La. Ct. App. 3d Cir. 1966), writ refused, 250 La. 100, 194 So. 2d 98 (1967).
As to whether the permission of the insured to drive the automobile survives the insured's death, with respect to extended insurance coverage, in the absence of a policy provision related to such extended coverage, see § 45.

9 Maryland Auto. Ins. Fund v. John, 198 Md. App. 202, 16 A.3d 1008 (2011).

10 Maryland Auto. Ins. Fund v. John, 198 Md. App. 202, 16 A.3d 1008 (2011).

11 Atlantic Ins. Co. v. Fulfs, 417 S.W.2d 302, 30 A.L.R.3d 1038 (Tex. Civ. App. Fort Worth 1967), writ refused n.r.e., (Oct. 4, 1967).

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I. In General

G. Termination of Coverage

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Insurance 1899, 1900, 1912 to 1926, 1929(1) to 1929(13), 1954, 1962, 2648

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance
A.L.R. Index, Automobile Collision Insurance
A.L.R. Index, Automobile Insurance
West's A.L.R. Digest, Insurance 1899, 1900, 1912 to 1926, 1929(1) to 1929(13), 1954, 1962, 2648

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I. In General

G. Termination of Coverage

§ 50. Cancellation of automobile insurance policy by insurer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1912 to 1921, 1962, 2648

A.L.R. Library

Cancellation of compulsory or "financial responsibility" automobile insurance, 44 A.L.R.4th 13

Forms

Forms relating to cancellation or termination of policy, generally, see Am. Jur. Pleading and Practice Forms, Automobile Insurance; Am. Jur. Legal Forms 2d, Automobile Insurance [Westlaw®(r) Search Query]

Insurance policies may be canceled by the insurer, by the insured, or by other persons in certain instances, if particular procedures are followed. Frequently the conduct of insurers in their cancellation of automobile insurance policies is regulated by state statute.[1] Statutes in some states have provided that an automobile insurer may terminate its insurance coverage by any of three methods: (1) by specifying an expiration date on the certificate submitted to the secretary of state certifying that it has issued an insurance policy; (2) by filing a notice of cancellation; or (3) by subsequently filing a certificate of substitute insurance.[2]

While motor vehicle liability insurance policies may be canceled by mutual consent or by the insured,[3] under compulsory automobile insurance statutes, cancellation by mutual agreement between the insured and the insurance company is ineffective if the statutory requirements are not complied with.[4] A no-fault statute intends to allow motor vehicle insurers only a limited period during which to reassess the risk after the formation of a policy and when the risk is deemed unacceptable to "cancel" the policy.[5] However, where a compulsory automobile insurance policy contains additional clauses providing for noncompulsory coverage, a cancellation of the policy will be effective as to the additional clauses even if it does not comply with the statutory requirements as to the cancellation of the compulsory insurance.[6]

Because a result of the insurer's cancellation of insurance coverage may be the suspension of the policyholder's driving privileges, the effect of such suspension upon the policyholder is an element of damages in a cause of action for breach of contract arising through wrongful cancellation of the insurance.[7]

Observation:

In some instances, where an insured has financed an automobile insurance transaction through a premium finance company and executed a power of attorney, cancellation may take place at the request of the premium finance company pursuant to that power of attorney, where applicable requirements for cancellation are met.[8] Nevertheless, a premium finance company's failure to obtain the statutorily required power of attorney from the insured did not invalidate the insurer's cancellation of the insured's automobile liability insurance as requested by premium finance company, given that the insurer had no obligation to independently verify whether the premium finance company had fulfilled its statutory obligation by obtaining a valid power of attorney before canceling the policy.[9]

Footnotes

1 Frey v. United Services Auto. Ass'n, 743 N.W.2d 337 (Minn. Ct. App. 2008); Robbins v. Insurance Dept., 11 A.3d 1048 (Pa. Commw. Ct. 2010).

2 Government Employees Ins. Co. v. Concord General Mut. Ins. Co., 458 A.2d 1205, 44 A.L.R.4th 1 (Me. 1983).
As to termination of automobile insurance binders, see § 16.
As to cancellation, rescission, and surrender of insurance policies, generally, see Am. Jur. 2d, Insurance §§ 397 to 424.

3 Auto-Owners Ins. Co. v. Hansen Housing, Inc., 2000 SD 13, 604 N.W.2d 504 (S.D. 2000).

4 Maryland Cas. Co. v. Baker, 304 Ky. 296, 200 S.W.2d 757 (1947).

5 Titan Ins. Co. v. Hyten, 491 Mich. 547, 817 N.W.2d 562 (2012).

6 Edwards v. American Home Assur. Co., 361 F.2d 622 (9th Cir. 1966).

7 Warren v. Allstate Ins. Co., 249 S.C. 89, 152 S.E.2d 727, 34 A.L.R.3d 378 (1967).

8 Atwater v. District of Columbia Dept. of Consumer & Regulatory Affairs, 566 A.2d 462 (D.C. 1989).

9 Selective Ins. Co. v. Urbina, 371 Ill. App. 3d 27, 308 Ill. Dec. 580, 861 N.E.2d 1145 (1st Dist. 2007).

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I. In General

G. Termination of Coverage

§ 51. Basis for termination of automobile insurance policy by insurer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1922 to 1926

A.L.R. Library

State regulation of insurer's nonacceptance, cancellation, or nonrenewal of, or increase in rate on, automobile insurance policy, based on driving record, 36 A.L.R.4th 1205

State statutes sometimes list, among the authorized reasons for cancellation of automobile insurance, circumstances where the named insured has failed to disclose in his or her written application, or in response to an inquiry by his or her broker or by the insurer or its agent, information necessary for the acceptance or proper rating of the risk.[1] Some state statutes may also authorize the cancellation of an automobile insurance policy by an insurer for certain reasons related to driving records. Thus, for instance, statutes have sometimes authorized the cancellation of automobile insurance policies based on nonpayment of a premium, or the suspension or revocation of one's registration or driver's license,[2] or the use of alcohol or controlled substances.[3]

Statutes in some states prohibit cancellation of an automobile insurance policy on the basis of marital status, and while authorizing an insurer to cancel an insurance policy of an insured if his or her driver's license has been suspended or revoked, prohibit an insurer from canceling the spouse's separate policy for the insured's acts.[4]

On the other hand, state statutes may provide a different standard for any other person who regularly and frequently operated the insured vehicle.[5] In addition, statutes sometimes provide that (1) no insurer may cancel an automobile insurance policy for one or more of specified reasons, including accidents involving lawfully parked automobiles,[6] accidents in which the insured was reimbursed by the person responsible, accidents involving automobiles struck in the rear absent any conviction of the insured for a moving violation, and any claims under the comprehensive portion of the policy, unless such claims were based on intentionally caused incidents, and that (2) no insurer may cancel an automobile insurance policy on the basis of one accident within a specified period prior to the upcoming anniversary date of the policy.[7] Some state statutes have prohibited insurers from canceling or otherwise terminating contracts with insureds who have paid premiums on their automobile insurance policies for five years or more, solely because the insured was involved in a single traffic accident.[8] Other statutes have sometimes precluded an insurer from canceling an automobile policy as the result of an insured person's involvement in a multivehicle accident when the insured was not at fault in such accident.[9]

In some jurisdictions, for a cancellation by an insurer of automobile insurance to be effective, the insurer's compliance with a statutory requirement that a certain form be sent by the insurer to the State Department of Public Safety, informing the department of the cancellation, must be established.[10]

While rescission of an automobile insurance policy is generally authorized under common-law rules for fraud or misrepresentation of the insured in obtaining insurance, this rule has been abrogated by statute in some states with regard to innocent third-party victims.[11]

Footnotes

1 Ramsdell v. State Auto Mut. Ins. Co., 206 Ga. App. 357, 425 S.E.2d 661 (1992).
An automobile insurer's letter to the insureds requesting "certain underwriting information" about the insureds' son was a "reasonable written request" for "information necessary to accurately underwrite or classify the risk," and thus the insureds' failure to respond to the request was a "substantial increase in the hazard insured against" establishing a statutory ground for cancellation of the insurance policy prior to its expiration date. Mills v. AAA Northern California, Nevada and Utah Insurance Exchange, 3 Cal. App. 5th 528, 207 Cal. Rptr. 3d 626 (3d Dist. 2016).
As to representations and warranties affecting automobile liability policy, see §§ 57 to 86.

2 Calfarm Ins. Co. v. Deukmejian, 48 Cal. 3d 805, 258 Cal. Rptr. 161, 771 P.2d 1247 (1989).
As to misrepresentations regarding driving records, see §§ 79 to 81.

3 Connor v. Insurance Dept., 810 A.2d 182 (Pa. Commw. Ct. 2002).
An automobile insurer's cancellation of a temporary binder on the ground that the applicant's driver's license had been suspended for underage consumption of alcohol was not a refusal to write a policy, but was a prohibited cancellation based on license suspension imposed for underage alcohol consumption. State Farm Mutual Auto. Ins. Co. v. Com., 124 A.3d 775 (Pa. Commw. Ct. 2015), appeal denied, 138 A.3d 7 (Pa. 2016).

4 Westerfer v. Insurance Com'r of Pennsylvania, 161 Pa. Commw. 568, 637 A.2d 746 (1994).
As to rescission of an automobile insurance policy for misrepresentation of one's marital status, generally, see § 67.

5 Torrez v. State Farm Mut. Auto. Ins. Co., 130 Ariz. 223, 635 P.2d 511 (Ct. App. Div. 1 1981).

6 State Farm Mut. Auto. Ins. Co. v. Insurance Dept., 20 A.3d 570 (Pa. Commw. Ct. 2011).

7 Travelers Indem. Co. of America v. Com., Ins. Dept., 63 Pa. Commw. 542, 440 A.2d 645 (1981).

8 Sentry Ins. v. Brown, 424 So. 2d 780, 36 A.L.R.4th 1195 (Fla. 1st DCA 1982).

9 Banks v. Aetna Cas. & Sur. Co., 189 Ga. App. 758, 377 S.E.2d 685 (1989).

10 Stapleton v. Colonial Ins. Co. of California, 209 Ga. App. 674, 434 S.E.2d 116 (1993).

11 As to representations and warranties affecting automobile liability policy, generally, see §§ 57 to 59.

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I. In General

G. Termination of Coverage

§ 52. Failure or refusal of insurer to renew automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1899

A.L.R. Library

State regulation of insurer's nonacceptance, cancellation, or nonrenewal of, or increase in rate on, automobile insurance policy, based on driving record, 36 A.L.R.4th 1205

Generally, absent an express provision in the policy, or an applicable statute, an insurer has no legal duty to renew an insurance policy once its term had expired, for any reason.[1] However, the common-law absolute right to refuse to renew a policy upon the expiration of its term may be restricted by statute so that an automobile insurance policy continues in force after its expiration date without a renewal,[2] unless and until notice of termination is given in accordance with the statute.[3]

State statutes sometimes prohibit an automobile insurer from failing to renew insurance when a person other than the named insureds has committed certain violations, provided that the named insureds agree to exclude such other person from coverage, and provided that the insurer may not fail to renew unless the named insured, any person who resided in the same household as the named insured and customarily operated a motor vehicle insured under the policy, or any other person who regularly and frequently operated such motor vehicle, was convicted, during a specified time period immediately preceding the effective date of the policy, or during the policy period, for operating a motor vehicle while in an intoxicated condition, or while under the influence of drugs.[4] In addition, statutes sometimes provide that no insurer may refuse to renew an automobile insurance policy

as a result of one accident in the statutory period attributable to the insured.[5] Where the statute lists specific reasons which could not be used by an automobile insurer to refuse to renew a policy of automobile insurance, any good reason not specifically stated could be considered by an insurer in determining whether to renew the policy.[6] Under the applicable statutory provisions, the combination of one accident covered exclusively under the second part of the statute, with any number of incidents covered under the first part, did not provide a valid basis for nonrenewal.[7] In addition, under such a statute, even accidents in which blame cannot reasonably be placed on the insured may be considered in deciding not to renew an automobile policy;[8] in this regard, pursuant to the applicable statutes, an automobile insurer may not refuse to renew a policy on the basis of only one accident, but two accidents, with or without fault, constitute valid justification for the refusal to renew unless the accidents fall within statutory exceptions.[9] Regulations in some states have authorized as an approved ground for nonrenewal, a request by the insurer's agent not to renew a policy, provided that the policy had been replaced with another carrier, and provided that the nonrenewing insurer had advised the insured of his or her right to renewal with it, should the replacement policy be canceled by the new carrier for any reason other than the reasons allowed for cancellation by state statute, which included suspension or revocation of registration or driver's license.[10]

Cancellation statutes are not applicable to nonrenewals of automobile insurance in some states.[11] However, by statutory mandate in some states, an insurer's right not to renew an automobile insurance policy may not be exercised by mere whim or caprice, and insurers are prohibited from refusing to renew solely because the insured was convicted of one or more traffic violations that did not involve an accident, or did not cause revocation or suspension of driving privileges, absent adequate proof of a relationship between the violation and the increased risk of highway accidents.[12] Some statutes have provided that insurers may not refuse renewal of automobile insurance policies based on traffic violations or accidents that occurred more than a statutorily specified time prior to the renewal date.[13]

Under state statutes regulating reasons for the nonrenewal of automobile insurance, an automobile insurer's refusal to renew an automobile insurance policy which originally covered one automobile, but was replaced with a high performance car, was illegal, since a material increase in the risk of loss to the insurer was not a good reason to not renew the policy under the applicable statutes, and the record was replete with statistical data presented by the insurer that illustrated its ability to rate risk associated with a particular high performance car.[14]

Caution:

Equitable estoppel barred a no-fault automobile insurer from enforcing an automatic nonrenewal provision of an insurance contract where the insurer repeatedly accepted the insured's late payments and continually renewed his policy.[15]

Footnotes

1 As to right not to renew, see Am. Jur. 2d, Insurance § 380.

2 Teeter v. Allstate Ins. Co., 9 A.D.2d 176, 192 N.Y.S.2d 610 (4th Dep't 1959), judgment aff'd, 9 N.Y.2d 655, 212 N.Y.S.2d 71, 173 N.E.2d 47 (1961).

3 As to notice requirements for cancellation of automobile insurance, see § 53.

4 Torrez v. State Farm Mut. Auto. Ins. Co., 130 Ariz. 223, 635 P.2d 511 (Ct. App. Div. 1 1981).
As to renewal of insurance policies, generally, see Am. Jur. 2d, Insurance §§ 378 to 391.

5 Nationwide Mut. Ins. Co. v. Foster, 134 Pa. Commw. 585, 580 A.2d 436 (1990).

6 Samilo v. Com., Ins. Dept., 98 Pa. Commw. 232, 510 A.2d 412 (1986).

7 Travelers Indem. Co. of America v. Com., Ins. Dept., 63 Pa. Commw. 542, 440 A.2d 645 (1981).

8 Hallowell v. Com., Ins. Dept., 105 Pa. Commw. 143, 523 A.2d 826 (1987).

9 Egnal v. Com., Ins. Dept., 132 Pa. Commw. 413, 573 A.2d 236 (1989).

10 Sheeran v. Nationwide Mut. Ins. Co., Inc., 159 N.J. Super. 417, 388 A.2d 272 (Ch. Div. 1978), judgment aff'd, 163 N.J. Super. 40, 394 A.2d 149 (App. Div. 1978), judgment modified on other grounds, 80 N.J. 548, 404 A.2d 625 (1979).

11 Banks v. Aetna Cas. & Sur. Co., 189 Ga. App. 758, 377 S.E.2d 685 (1989); Frey v. United Services Auto. Ass'n, 743 N.W.2d 337 (Minn. Ct. App. 2008).
As to cancellation of automobile insurance by insurer, generally, see § 50.

12 Sentry Ins. v. Brown, 424 So. 2d 780, 36 A.L.R.4th 1195 (Fla. 1st DCA 1982).
An automobile insurer did not violate a statute prohibiting nonrenewal of a policy for reasons that were arbitrary or capricious when the insurer nonrenewed the policy for the legitimate reason that it discovered that the driver's license of the insured's husband was suspended. Tome v. State Farm Fire and Cas. Co., 125 So. 3d 864 (Fla. 4th DCA 2013).

13 Government Employees Ins. Co. v. Insurance Com'r, 40 Md. App. 201, 389 A.2d 422 (1978).

14 American Motorists Ins. Co. v. Insurance Dept. of Pennsylvania, 154 Pa. Commw. 17, 622 A.2d 406 (1992).

15 Morales v. Auto-Owners Ins. Co., 458 Mich. 288, 582 N.W.2d 776 (1998).
As to equitable estoppel, generally, see Am. Jur. 2d, Estoppel and Waiver §§ 1 to 4.

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I. In General

G. Termination of Coverage

§ 53. Notice requirements for cancellation or nonrenewal of automobile insurance policy; notice to or by insured

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1900, 1929(1) to 1929(13), 1954

A.L.R. Library

Cancellation of compulsory or "financial responsibility" automobile insurance, 44 A.L.R.4th 13

State regulation of insurer's nonacceptance, cancellation, or nonrenewal of, or increase in rate on, automobile insurance policy, based on driving record, 36 A.L.R.4th 1205

Trial Strategy

Ineffective Cancellation of Automobile Insurance Policy—Deficient Repayment or Tender of Unearned Premium, 11 Am. Jur. Proof of Facts 3d 227

Ineffective Cancellation of Automobile Insurance Policy—Deficient Form or Content of Cancellation Notice, 11 Am. Jur. Proof of Facts 3d 131

Ineffective Cancellation of Automobile Insurance Policy—Deficient Communication of Cancellation Notice, 10 Am. Jur. Proof of Facts 3d 483

Forms

Forms relating to cancellation or termination of policy, generally, see Am. Jur. Pleading and Practice Forms, Automobile Insurance; Am. Jur. Legal Forms 2d, Automobile Insurance [Westlaw®(r) Search Query]

Absent an express provision in the policy, or an applicable statute, an insurer has no legal duty to renew an insurance policy once its term had expired, for any reason.[1] However, by statute, an automobile insurance policy continues in force after its expiration date without a renewal,[2] unless and until notice of termination is given in accordance with the applicable statute.[3] An automobile insurer must provide the insured with notice within a specified time before termination of the policy of its intention not to renew it.[4] Nonrenewal is invalid in some states absent adequate notice by the insurer of the reasons for nonrenewal,[5] although some state statutes do not require the insurer to provide a statement of the permissible substantive reason for nonrenewal to make the notice of nonrenewal procedurally effective.[6] Furthermore, the omission, in a notice of cancellation of an automobile insurance policy, of statements that proof of financial security must be maintained, ordinarily renders such notice ineffective.[7] However, compulsory insurance statutes requiring notice prior to cancellation of automobile insurance policies generally apply only to cancellation of such policies and other features of such policies mandated by the applicable compulsory insurance statute.[8]

Automobile insurers must comply strictly with policy provisions and statutory mandates concerning written notice of cancellation.[9] Where there has been an invalid cancellation of an automobile liability insurance policy, the policy remains in effect until the end of its term or until a valid cancellation notice is perfected, whichever event first occurs.[10]

The form and sufficiency of a notice of cancellation of insurance are determined by policy provisions, subject to the rule that statutory provisions respecting notice, which are for the benefit of the insured, cannot be avoided by provisions contained in the contract which are not beneficial to him.[11] Thus, for example, an automobile liability insurance policy was in effect at the time an accident occurred where the insurance company failed to satisfy the statutory notice requirements in that the notice did not state the date on which any cancellation or refusal to renew would become effective, a date which had to be expressly and carefully specified with certainty in order to comply with the statutory requirements; the notice neither expressly informed the insured that his policy was about to expire nor apprised him of the date of expiration, and failed to satisfy the requirement that the insurer manifest its willingness to renew.[12]

Once proper notice of cancellation has been given the statutory requirement has been satisfied, and a subsequent notice, stating erroneously that the coverage of the policy would terminate at a later date, does not render the initial notice ineffective so that there is no coverage after the date stated in the original notice.[13] The failure to advise the insured of his or her right to contest the insurer's decision to cancel does not invalidate the cancellation where no prejudice to the insured results from such deficiency of the notice.[14]

For automobile insurance policies, the proof of notice of cancellation is regulated by statute in some states.[15] The fact that the automobile insurer mails the notice of cancellation on the date the premium is due does not render such cancellation ineffective.[16] Furthermore, there is some authority for the view that if a cancellation notice as to automobile insurance is properly prepared and mailed, the insured's actual receipt of it is not required.[17] Thus, for example, a notice of cancellation of automobile insurance need not actually be received by the insured where an automobile liability policy provides that cancellation for nonpayment of a premium may be effected by mailing notice to the insured, states that proof of mailing of any notice is sufficient proof of notice, and neither a statute nor public policy requires that the notice of cancellation actually be received by insureds to effectuate a valid cancellation.[18] Notice of cancellation of an automobile insurance policy was not required to be given to a driver who was listed on the insurance application as a named insured, but only as a regular driver of the car, and where there was nothing on the application to indicate that such person had an insurable interest in the car, despite the fact that the title of the car was in such person's name.[19]

Certain statutory requirements for the giving of notice before the cancellation of compulsory insurance policies will become effective have no application where the cancellation is effected through the request of the insured and not at the behest of the insurer.[20] However, compulsory insurance policies sometimes contain provisions permitting cancellation at the request of the insured by mailing to the insurer written notice stating when thereafter the cancellation should be effective. Even so, such a policy requirement that the cancellation be in writing is for the benefit of the insurer and may be waived by it.[21]

Where a statutory provision calls for the automatic termination of coverage upon the procuring of other insurance, termination of the first policy is effective without the initial insurer having given the statutorily required notice to the insured.[22]

Observation:

An insurer who, after discovering a material misrepresentation in a driver's application for insurance, chose, rather than issuing a letter of rescission, to issue a notice of cancellation effective at a future date, and to retain the premium until that date, could not rescind the insurance following an accident which occurred after the notice of cancellation, but prior to its effective date; in such circumstances, the insured relied upon the date of cancellation, and the insurer therefore waived its right to rescind.[23]

Footnotes

1 As to right not to renew, see Am. Jur. 2d, Insurance § 380.

2 As to failure or refusal of insurer to renew automobile insurance policy, see § 52.

3 Luizzi v. Pro Transport Inc., 548 F. Supp. 2d 1 (E.D. N.Y. 2008); Georgia Farm Bureau Mut. Ins. Co. v. Phillips, 251 Ga. 244, 304 S.E.2d 725 (1983); Public Service Mut. Ins. Co. v. Foley, 190 A.D.2d 800, 593 N.Y.S.2d 847 (2d Dep't 1993).
An automobile insurer's compliance with the statute governing procedure for nonrenewal of underinsured motorist coverage and a consistent provision in the policy itself effected valid nonrenewal of coverage, regardless of whether it failed to provide any substantive basis for termination of the policy in the notice to the insured. Nationwide Mut. Ins. Co. v. Briggs, 555 Fed. Appx. 799 (10th Cir. 2014) (applying Kansas law).

An automobile insurer was entitled to cancel a motorist's policy for nonpayment of the renewal premium, despite the claim that the insurer failed to provide the 45-day advance notice of its intention not to renew; the nonpayment constituted an exception in the statute requiring advance notice, the insurer notified the motorist of its intent to renew by sending him a renewal policy and notifying him that he would be receiving a notice, the motorist received the invoice that advised him to pay the minimum due to avoid cancellation of coverage but he did not pay, and six days later, notice of cancellation was conveyed to the motorist in a notice of expiration that stated that the policy had expired but would be continued without interruption if the motorist paid the premium due but, again, he did not pay. Finn v. Dakota Fire Ins. Co., 2015 MT 253, 380 Mont. 481, 356 P.3d 13 (2015).

4 Strickland v. Motors Ins. Corp. (MIC), 970 F.2d 132 (5th Cir. 1992) (30 days' notice).

An insurer's mailing of a notice of cancellation must be reasonably calculated to be delivered so as to arrive at the insured's address at least 10 days before the date specified for cancellation; the statute permits the insurer to cancel the policy at any time by mailing to the insured "a not less than 10 days' written notice of cancellation." Nowell v. Titan Ins. Co., 466 Mich. 478, 648 N.W.2d 157 (2002).

5 State Farm Mut. Auto. Ins. Co. v. Com., Dept. of Ins., 134 Pa. Commw. 226, 578 A.2d 999 (1990).

6 Nationwide Mut. Ins. Co. v. Briggs, 298 Kan. 873, 317 P.3d 770 (2014).

7 Kelly v. Amica Mut. Ins. Co., 142 A.D.2d 555, 530 N.Y.S.2d 221 (2d Dep't 1988).

8 Dunn v. Safeco Ins. Co. of America, 14 Kan. App. 2d 732, 798 P.2d 955 (1990).

As to termination of automobile insurance binders, see § 16.

As to termination of automobile insurance coverage for fraud or misrepresentation, generally, see §§ 57 to 65.

9 Lee v. AIG Cas. Co., 919 F. Supp. 2d 219 (D. Conn. 2013).

10 United Services Auto. Ass'n v. Lucas, 233 W. Va. 68, 754 S.E.2d 754 (2014).

11 As to form and sufficiency of notice of cancellation, see Am. Jur. 2d, Insurance § 409.

12 Hales v. North Carolina Ins. Guar. Ass'n, 337 N.C. 329, 445 S.E.2d 590 (1994).

13 Faizan v. Grain Dealers Mut. Ins. Co., 254 N.C. 47, 118 S.E.2d 303 (1961).

14 Evans v. Government Emp. Ins. Co., 257 N.W.2d 689 (Minn. 1977).

15 Banton v. State Farm Mut. Auto. Ins. Co., 54 So. 3d 1062 (Fla. 3d DCA 2011).

16 Timely Entertainment Intern., Inc. v. State Farm Fire & Cas. Co., 208 Ga. App. 467, 430 S.E.2d 844 (1993).

17 Hunter v. Automotive Cas. Ins. Co., 606 So. 2d 571 (La. Ct. App. 5th Cir. 1992), writ denied, 609 So. 2d 225 (La. 1992); Bullock v. Hanover Ins. Co., 144 A.D.2d 416, 534 N.Y.S.2d 197 (2d Dep't 1988).

An automobile liability insurer provided sufficient proof of notice by mailing renewal offers and notice of policy lapse to the address provided by the insured in the application, even though the mailings did not contain the insured's apartment number and even if the insurer was statutorily required to provide reasonable notice of payment due in advance of the due date, as the insured failed to include any apartment number in the application, and no apartment number appeared on the policy declarations page. Rodriguez v. Security Nat. Ins. Co., Inc., 138 So. 3d 520 (Fla. 3d DCA 2014).

18 Bell v. Patrons Mut. Ins. Ass'n, 15 Kan. App. 2d 791, 816 P.2d 407 (1991).

19 Phipps v. State Farm Mut. Ins. Co., 206 Mich. App. 199, 520 N.W.2d 704 (1994).

As to insurable interest, generally, see §§ 17 to 20.

20 Hanover Ins. Co. v. Eggelton, 88 A.D.2d 188, 453 N.Y.S.2d 898 (3d Dep't 1982), order aff'd, 57 N.Y.2d 1020, 457 N.Y.S.2d 479, 443 N.E.2d 954 (1982).

When an insured is seeking cancellation of an automobile liability insurance policy prior to the policy's anticipated termination date, he is not entitled to any notice from the insurer. Erdey v. Progressive Sec. Ins. Co., 31 So. 3d 417 (La. Ct. App. 1st Cir. 2009), writ denied, 31 So. 3d 364 (La. 2010).

As to the notice required to be given to government bodies or officials, generally, see § 54.

21 Country-Wide Ins. Co. v. Wagoner, 57 A.D.2d 498, 395 N.Y.S.2d 300 (4th Dep't 1977), judgment rev'd on other grounds, 45 N.Y.2d 581, 412 N.Y.S.2d 106, 384 N.E.2d 653 (1978).

As to cancellation of insurance, generally, by the insured parties, see Am. Jur. 2d, Insurance § 425.

22 As to automatic termination upon procuring of similar or duplicative coverage, and substitution of vehicles covered, see § 55.

23 Burton v. Wolverine Mut. Ins. Co., 213 Mich. App. 514, 540 N.W.2d 480 (1995).

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7 Am. Jur. 2d Automobile Insurance § 54

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Automobile Insurance

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I. In General

G. Termination of Coverage

§ 54. Notice to, consent of, and hearing before, governmental entity regarding cancellation of automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1929(13)

A.L.R. Library

State regulation of insurer's nonacceptance, cancellation, or nonrenewal of, or increase in rate on, automobile insurance policy, based on driving record, 36 A.L.R.4th 1205

Under some state statutes, the termination of coverage by an automobile insurer is not effective where an insurer fails to file a notice of cancellation with specified government bodies or officials,[1] which rule applies to the cancellation of required motor carriers' insurance,[2] and this is so, in some instances, even where the insurer's attempted cancellation is at the request of the insured.[3] In this regard, insurers have been prohibited by some state statutes from refusing to renew required no-fault coverage without the consent of the state insurance commissioner.[4]

Observation:

Although "cancellation" is a term of art in the insurance industry—meaning termination of existing policy coverage within a policy period, while nonrenewal may merely be an insurer's exercise of its right not to extend another contract to the insured—a state legislature, in enacting its financial responsibility statute making certain automobile policies "noncancellable" except after 15 days' notice to the state commissioner of motor vehicles, did not intend to use the term in this technical sense so as to limit the statute's applicability only to policies canceled before their expiration date, but, rather, the statute simply prohibited the termination of financial responsibility policies by any means, whether cancellation, expiration, or nonrenewal, without 15 days' notice to the commissioner.[5]

Although there is some authority to the contrary,[6] generally, a complete failure to give notice to the proper governmental official or agency of cancellation of a compulsory automobile policy, as required by statute, leaves the policy in force regardless of the intention of the party attempting cancellation.[7] However, where the coverage limit of the policy is higher than that required by the statute, the coverage limit continuing in effect is that which is required by statute, and not the stated policy limit.[8]

Mistakes or irregularities in the notice of cancellation invalidate the notice only if they are of substance so as to render the notice ineffective, and such defects will be disregarded if they are of a mere formal nature.[9] A statute requiring an automobile insurer to forward to the registrar of motor vehicles a notice of cancellation of a policy does not require that the notice be perfect in order to be timely, although substantive defects in the notice can make it a nullity.[10] Where an automobile insurer acknowledged that the form which it submitted to a state's secretary of state did not contain an expiration date and that no notice-of-cancellation form was ever transmitted to the secretary of state, the insurer was precluded from asserting that the policy had been canceled by the insured's failure to renew the policy or pay further premiums.[11]

In accordance with the general rule that insurance policies issued to satisfy the requirements of compulsory insurance laws must conform to the statutory requirements,[12] the parties cannot effectively agree to waive the statutory requirements relating to notification to the appropriate agency or official.[13] Thus, the fact that a policy provides that a cancellation will be effective upon the insurer's mailing of notice to the appropriate governmental office does not make such a mailing sufficient to accomplish that purpose where the statute contemplates actual notice.[14] Where an insured has substituted a second vehicle for the initial vehicle under a policy's coverage, thereby automatically canceling coverage on the first vehicle,[15] the insurer was not required to notify the State Department of Motor Vehicles of the substitution of automobiles covered.[16]

Statutes in some states have provided that an automobile insurer may terminate its insurance coverage in methods other than by filing a notice of cancellation with the applicable state official, such as by specifying an expiration date on the certificate submitted to the secretary of state certifying that it has issued an insurance policy, or by subsequently filing a certificate of substitute insurance.[17]

Statutes in some states provide for a hearing before the state insurance commissioner to justify a proposed nonrenewal of an insured's coverage under an automobile insurance policy.[18]

Footnotes

1 Aplin v. American Sec. Ins. Co., 568 So. 2d 757 (Ala. 1990); Government Employees Ins. Co. v. Phillip, 98 A.D.3d 616, 949 N.Y.S.2d 499 (2d Dep't 2012).
Under a provision of a state financial responsibility law that certified insurance should not be canceled or terminated until at least 10 days after the filing of notice to that effect with the Department of Transportation, the notice provision was triggered by the expiration of coverage regardless of reason for it. Lang v. Kurtz, 100 Wis. 2d 40, 301 N.W.2d 262 (Ct. App. 1980).
As to the notice of cancellation required of an insurer prior to the cancellation of insurance, generally, see Am. Jur. 2d, Insurance §§ 408 to 411.

2 Transamerica Ins. Co. v. Tab Transportation, Inc., 12 Cal. 4th 389, 48 Cal. Rptr. 2d 159, 906 P.2d 1341 (1995); Great West Cas. Co. v. Christenson, 450 N.W.2d 153 (Minn. Ct. App. 1990).
As to the financial responsibility and security requirements of motor carriers, generally, see Am. Jur. 2d, Automobiles and Highway Traffic §§ 175 to 183.

3 Nassau Ins. Co. v. Samuels, 80 A.D.2d 855, 436 N.Y.S.2d 762 (2d Dep't 1981).

4 Sheeran v. Nationwide Mut. Ins. Co., Inc., 159 N.J. Super. 417, 388 A.2d 272 (Ch. Div. 1978), judgment aff'd, 163 N.J. Super. 40, 394 A.2d 149 (App. Div. 1978), judgment modified on other grounds, 80 N.J. 548, 404 A.2d 625 (1979).

5 American Cas. Co. of Reading, Pennsylvania v. Nordic Leasing, Inc., 42 F.3d 725 (2d Cir. 1994).

6 Mueller v. American Indem. Co., 19 Wis. 2d 349, 120 N.W.2d 89 (1963).

7 Allen v. Canal Ins. Co., Greenville, S. C., 433 S.W.2d 352 (Ky. 1968).
Where an insurer who issued a one-year policy in accordance with a financial responsibility statute failed to give the secretary of state notice that it had canceled the policy when the insured failed to renew, the cancellation of the policy was not effective. Government Employees Ins. Co. v. Concord General Mut. Ins. Co., 458 A.2d 1205, 44 A.L.R.4th 1 (Me. 1983).

8 Oregon Auto. Ins. Co. v. Thorbeck, 283 Or. 271, 583 P.2d 543 (1978).

9 Greenberg v. Flaherty, 306 Mass. 95, 27 N.E.2d 683, 129 A.L.R. 846 (1940).

10 Norfolk & Dedham Mut. Fire Ins. Co. v. National Continental Ins. Co., 84 Mass. App. Ct. 901, 994 N.E.2d 812 (2013).

11 Government Employees Ins. Co. v. Concord General Mut. Ins. Co., 458 A.2d 1205, 44 A.L.R.4th 1 (Me. 1983).

12 As to construction of compulsory motor vehicle insurance laws, see §§ 23, 27.

13 Lewis Mach. Co. v. Aztec Lines, 172 F.2d 746 (7th Cir. 1949).

14 Leitner v. Citizens Cas. Co. of N. Y., 135 N.J.L. 608, 52 A.2d 687, 171 A.L.R. 546 (N.J. Ct. Err. & App. 1947).

15 As to automatic termination upon procuring of similar or duplicative coverage, and substitution of vehicles covered, see § 55.

16 Huertas v. Pino, 143 Misc. 2d 776, 542 N.Y.S.2d 484 (Sup 1989).

17 As to cancellation of automobile policies by insurer, see § 50.

18 Insurance Com'r of State v. Nevas, 81 Md. App. 549, 568 A.2d 1144 (1990).

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7 Am. Jur. 2d Automobile Insurance § 55

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I. In General

G. Termination of Coverage

§ 55. Automatic termination upon procuring similar or duplicative coverage; substitution of vehicles covered

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2648

A.L.R. Library

Validity and construction of automobile insurance provision or statute automatically terminating coverage when insured obtains another policy providing similar coverage, 61 A.L.R.4th 1130

Some automobile insurance policies expressly provide for automatic termination of coverage at the time other duplicative coverage is procured. Such a policy provision has been deemed valid and given full effect according to its terms, despite an apparent conflict with statutory notice requirements, where it was found to be beyond interpretive construction.[1] However, where a similar provision was included in a policy under the heading of "renewal," it was too ambiguous to be effective as an automatic termination provision, and was instead construed to provide for a condition of nonrenewal at the end of the policy term.[2] The inclusion of an "other insurance" clause in a policy with such an automatic termination provision does not render the termination provision invalid due to ambiguity.[3] Where a statutory provision calls for the automatic termination of automobile insurance coverage where another policy has been procured, such termination is effective without the initial insurer having given statutorily required notice to the insured.[4]

Similarly, a vehicle was not insured under an automobile liability policy on the date of an accident where the insured had substituted a second vehicle for the initial vehicle under the policy's coverage, thereby automatically canceling coverage on the first vehicle,[5] and the insurer was not required to notify the State Department of Motor Vehicles of the substitution of automobiles covered.[6]

Footnotes

1 Fidelity & Cas. Co. of New York v. State Farm Fire & Cas. Co., 947 So. 2d 1194 (Fla. 3d DCA 2007); Taxter v. Safeco Ins. Co. of America, 44 Wash. App. 121, 721 P.2d 972 (Div. 3 1986).
As to cancellation and substitution of insurance policies by an agent of two or more insurance companies, generally, see Am. Jur. 2d, Insurance §§ 439 to 443.

2 Travelers Indem. Co. of Rhode Island v. Lucas, 678 S.W.2d 732, 61 A.L.R.4th 1123 (Tex. App. Texarkana 1984).

3 Taxter v. Safeco Ins. Co. of America, 44 Wash. App. 121, 721 P.2d 972 (Div. 3 1986).

4 Employers Commercial Union Ins. Co. v. Firemen's Fund Ins. Co., 45 N.Y.2d 608, 412 N.Y.S.2d 121, 384 N.E.2d 668 (1978).

5 Huertas v. Pino, 143 Misc. 2d 776, 542 N.Y.S.2d 484 (Sup 1989).

6 As to the notice required to be given to government bodies or officials, generally, see § 54.

7 Am. Jur. 2d Automobile Insurance § 56

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I. In General

G. Termination of Coverage

§ 56. Notice of cancellation of assigned risk policies by insurer

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 1929(1)

Where an insurer is assigned coverage of an insured's vehicle by a state assigned risk plan, to cancel the insurance it is required to give specific types of notice as required by the plan rules, and the applicable policy.[1] An assigned risk insurer is required to send the insured notice of cancellation separate from its renewal or billing notice to effect termination of insurance coverage.[2] In some states, an insurer's right to cancel an assigned risk policy upon notice for nonpayment of a premium is contingent upon the mailing of a proper bill, which must strictly comply with billing procedures set forth by statute. In this regard, an insurer could not cancel an assigned risk policy for the nonpayment of a premium where it failed to inform the insured of an option to remit the premium payment either through a producer or directly to the insurer.[3] Furthermore, an attempted cancellation of an assigned risk policy by an automobile insurer is ineffective in some states where the insurer fails to comply with applicable statutory notice requirements, including a statement informing the insured that he might seek review of the cancellation by the committee of assigned risk plan, and containing an address where such request for review is to be directed.[4] The failure of an assigned risk insurer to give the notice required by statute to the insureds prior to the expiration of their policies in order to afford the insureds a reasonable opportunity to maintain continuous coverage, results in the continuation of insurance coverage.[5] Furthermore, the insurer's failure to give timely notice under a cancellation clause in an assigned risk insurance policy will prevent a cancellation of the policy.[6]

However, an assigned risk policy was not within the scope of the statutory definition of the term “policy” for the purpose of a statute requiring that cancellation of insurance “policies” must be by certified mail.[7] Furthermore, there is some authority for the view that the failure to notify a state commissioner of motor vehicles of the cancellation of an assigned risk insurance policy does not affect the validity of the notice of termination.[8] Although a statute requires an insurer to notify the state division of motor vehicles of the loss of coverage under a noncertified assigned risk automobile liability policy for nonpayment of a premium,

the termination of the policy necessarily precedes notification under the statute and, thus, notice is not a condition precedent to the effective termination of coverage. Under such statutory provisions, the failure to notify the division of motor vehicles does not preclude an effective termination; rather, only defective notification to the insured would render the cancellation of such a policy ineffective and extend the liability of the insurer.[9]

Footnotes

1 Fireman's Fund Ins. Co. v. Corcoran, 156 A.D.2d 167, 548 N.Y.S.2d 211 (1st Dep't 1989).

2 State Farm Mut. Auto. Ins. Co. v. Mundorf, 659 A.2d 215 (Del. 1995).

3 Home Indem. Co. v. Scricca, 147 A.D.2d 697, 538 N.Y.S.2d 304 (2d Dep't 1989).

4 Federal Ins. Co. v. Rivera, 122 Misc. 2d 506, 471 N.Y.S.2d 232 (Sup 1984).

5 Goetz v. Country Mut. Ins. Co., 28 Ill. App. 3d 154, 328 N.E.2d 109 (2d Dist. 1975); Perkins v. American Mut. Fire Ins. Co., 274 N.C. 134, 161 S.E.2d 536 (1968).

6 Royal Indem. Co. v. Adams, 309 Pa. Super. 233, 455 A.2d 135 (1983).

7 Thomas v. Veltre, 381 A.2d 245 (Del. Super. Ct. 1977).
As to the termination and cancellation of automobile insurance, generally, see §§ 50 to 56.

8 Application of Liberty Mut. Ins. Co., 122 Misc. 2d 310, 471 N.Y.S.2d 221 (Sup 1984).
As to the notice required to be given to government bodies or officials, generally, see § 54.

9 Allstate Ins. Co. v. McCrae, 325 N.C. 411, 384 S.E.2d 1 (1989).

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7 Am. Jur. 2d Automobile Insurance II A Refs.

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II. Misrepresentations, Warranties, and Conditions by Insured

A. Effect, Generally

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Insurance 2954, 2962, 2968, 2969, 2982, 2983, 3006, 3006.1, 3009

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance
A.L.R. Index, Automobile Collision Insurance
A.L.R. Index, Automobile Insurance
West's A.L.R. Digest, Insurance 2954, 2962, 2968, 2969, 2982, 2983, 3006, 3006.1, 3009

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7 Am. Jur. 2d Automobile Insurance § 57

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II. Misrepresentations, Warranties, and Conditions by Insured

A. Effect, Generally

§ 57. Insurer's right to rescind automobile insurance policy for misrepresentations by insured in application

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2968, 2969, 3006

Trial Strategy

Insurer's Right to Rescind Insurance Contract for the Insured's False Statements, 21 Am. Jur. Proof of Facts 3d 565

Insurance Agent's or Broker's Failure to Procure Insurance, 10 Am. Jur. Proof of Facts 3d 579

Forms

Forms relating to misrepresentations, representations, warranties, and conditions, generally, see Am. Jur. Pleading and Practice Forms, Automobile Insurance [Westlaw®(r) Search Query]

A "representation," in the law of insurance, means a statement made to the insurer before or at the time of making the contract, presenting the elements upon which the risk is either accepted or rejected. A "misrepresentation" is a statement as a fact of something which is untrue, and which the insured states with the knowledge that it is untrue and with an intent to deceive, or

which he or she states positively as true without knowing it to be true, and which has a tendency to mislead, where such fact in either case is material to the risk.[1]

A "warranty," in the law of insurance, is a statement, description, or undertaking on the part of the insured, appearing in the policy or in another instrument properly incorporated in the policy, relating contractually to the risk insured against.[2] If a statement as to ownership in an automobile liability policy is expressly embodied as a "warranty," it is by definition an essential term of the contract, breach of which permits the insurer to avoid liability.[3] Furthermore, the falsity of a material misrepresentation may render the contract voidable for fraud, while a noncompliance with a warranty is an express breach of contract.[4] Thus, in some jurisdictions a false warranty will render an automobile insurance policy void ab initio, while a misstatement that does not rise to the level of a warranty may only render the policy voidable.[5]

Contradictory language in an automobile insurance contract as to whether answers to questions on an insurance application constitute warranties or representations requires that the answers be construed as representations rather than as warranties,[6] since ambiguities in such contracts are to be strongly construed against the insurer.[7]

In some jurisdictions, technical distinctions between warranties and representations have to some extent been abrogated or abolished by statutes providing, for example, that neither a misstatement nor breach of warranty will avoid a policy of insurance unless it relates to a matter material to the risk.[8] The terms "warranty" and "conditions precedent" are often used interchangeably or synonymously, although there may be a distinction between the two in that a warranty does not suspend or defeat the operation of the contract, a breach of warranty affording either the remedy expressly provided in the contract or that furnished by law, while a condition precedent is one without the performance of which the contract, although in form executed by the parties and delivered, does not spring into life.[9]

While the common-law right of rescission of automobile insurance policies for misrepresentations by the insured has, in some jurisdictions, been abrogated by statute,[10] in other states, insurers retain the common-law right of postloss ab initio rescission for fraudulent procurement of auto insurance policies.[11] In such a state, a five-part test is applied to determine when ab initio rescission is appropriate. The insurer must show not only: (1) the falsity of the statement, but that the falsity was (2) known to the applicant, (3) material to the risk, (4) made with intent to defraud the insurer, and (5) relied upon by the insurer in issuing the policy.[12] In some jurisdictions, when the defense to an automobile insurance policy is based on false and fraudulent misrepresentations, the following three elements must be established by the insurer to void the policy: (1) the declaration must be false,[13] or not substantially true;[14] (2) its subject matter must be material to the risk; and (3) the applicant must have known it to be false or must have made the statement in bad faith.[15] A misrepresentation is not required to be causally related to the injury or loss in question, in order for an automobile insurer to void the policy on the basis of such misrepresentation.[16] The insurer raising the material misrepresentation defense bears the burden of proof.[17]

A distinction exists between a material misrepresentation by an insured regarding a loss that already has occurred in order to purchase insurance coverage for that loss,[18] and a material misrepresentation regarding some other fact that might have led the insurer not to issue a policy if it had been known;[19] an automobile insurance policy obtained fraudulently after the occurrence of an "insured event" is void ab initio.[20] However, some courts have refused to declare automobile insurance policies void as to injured third parties where the insured has breached a warranty or condition precedent to the policy.[21]

An insurance agent who takes an application for insurance acts as the agent of the insurer and not of the insured,[22] and where an applicant for automobile insurance gives correct information to an insurance agent who, without knowledge of the applicant, records the answers incorrectly, the acts of the agent under such circumstances are binding upon the insurer.[23] If

an agent by mistake, fraud or negligence inserts erroneous or untrue answers to the questions contained in the application, those representations are not binding upon the insured.[24] However, the fact that an insurance agent's question to an automobile insurance applicant, and the insurance applicant's answers, are oral communications, does not mean that the applicant's answers, as a matter of law, are not misrepresentations.[25]

Observation:

Misrepresentations made in an excess insurance policy as to products liability coverage does not affect the excess insurer's liability on an automobile claim, as the products liability coverage in the policy is a separate contract of insurance from the automobile coverage in the policy.[26]

An insurer may be estopped from asserting fraud in the inducement of an auto insurance contract, where, for example, it accepts payment of a premium subsequent to becoming aware of the alleged fraud, retains the premium, and takes no steps to retroactively rescind the policy.[27]

An untimely response to a request for admission that the insured made a misrepresentation as to automobile insurance may serve as an admission to such misrepresentation.[28]

Footnotes

1 As to definitions and nature of representations and misrepresentations, generally, see Am. Jur. 2d, Insurance § 1012.

2 Am. Jur. 2d, Insurance § 1023.

3 Merchants Indem. Corp. of N. Y. v. Eggleston, 68 N.J. Super. 235, 172 A.2d 206 (App. Div. 1961), judgment aff'd, 37 N.J. 114, 179 A.2d 505 (1962).
As to the distinction between a representation and a warranty, generally, see Am. Jur. 2d, Insurance § 1025.

4 Am. Jur. 2d, Insurance § 1032.

5 State Farm Fire & Cas. Co. v. Davidson, 87 Ohio App. 3d 101, 621 N.E.2d 887 (2d Dist. Montgomery County 1993).

6 Sanford v. Federated Guar. Ins. Co., 522 So. 2d 214 (Miss. 1988); James v. Safeco Ins. Co. of Illinois, 195 Ohio App. 3d 265, 2011-Ohio-4241, 959 N.E.2d 599 (8th Dist. Cuyahoga County 2011).

7 Green v. Brown, 51-152 La. App. 2 Cir. 2/15/17, 2017 WL 604994 (La. Ct. App. 2d Cir. 2017).
As to construction of automobile insurance policies, generally, see § 5.

8 As to statutes relating to materiality of statements, see Am. Jur. 2d, Insurance § 1004.

9 As to warranties and conditions compared and distinguished, see Am. Jur. 2d, Insurance § 1035.

10 JCC Medical, P.C. v. Infinity Group, 2016 WL 7436980 (N.Y. App. Term 2016) (under Georgia and New York law, automobile insurer could not retroactively rescind the policy based on the insured's misrepresentations); Government Employees Ins. Co. v. Allen, 95 A.D.3d 1322, 944 N.Y.S.2d 761 (2d Dep't 2012).
As to compulsory insurance statutes and rights of injured third parties, see § 59.

11 Delta Diagnostic Radiology, P.C. v. Infinity Group, 49 Misc. 3d 42, 18 N.Y.S.3d 816 (App. Term 2015) (under Pennsylvania law, an insurer is permitted to retroactively rescind an automobile insurance policy based upon material misrepresentations made by the named insured in the application for the policy).

12 American Centennial Ins. Co. v. Sinkler, 903 F. Supp. 408 (E.D. N.Y. 1995) (construing South Carolina law).
As to materiality of misrepresentations, generally, see § 61.
As to intent as an element of misrepresentation, see § 62.

13 Transit Cas. Ins. Co. v. Nationwide Mut. Ins. Co., 537 F. Supp. 65 (E.D. Pa. 1982).

14 Sanford v. Federated Guar. Ins. Co., 522 So. 2d 214 (Miss. 1988).

15 Transit Cas. Ins. Co. v. Nationwide Mut. Ins. Co., 537 F. Supp. 65 (E.D. Pa. 1982).

16 Auto-Owners Ins. Co. v. Michigan Com'r of Ins., 141 Mich. App. 776, 369 N.W.2d 896 (1985).

17 Abshire v. Desmoreaux, 970 So. 2d 1188 (La. Ct. App. 3d Cir. 2007), writ denied, 978 So. 2d 326 (La. 2008).

18 North Carolina Farm Bureau Mut. Ins. Co. v. Simpson, 198 N.C. App. 190, 678 S.E.2d 753 (2009).
As to concealment, see § 63.

19 Auto-Owners Ins. Co. v. Johnson, 209 Mich. App. 61, 530 N.W.2d 485 (1995).

20 Brown v. Community Moving & Storage, Inc., 186 W. Va. 691, 414 S.E.2d 452 (1992).

21 Fisher v. New Jersey Auto. Full Ins. Underwriting Ass'n By and Through Hanover Ins. Co., 224 N.J. Super. 552, 540 A.2d 1344 (App. Div. 1988).
As to the effect of compulsory insurance statutes on the continued validity of automobile insurance policies with regard to injured third parties, see § 59.

22 As to nature of insurance agents, generally, see Am. Jur. 2d, Insurance § 111.

23 Northwestern Mut. Ins. Co. of Seattle v. Richardson, 1970 OK 99, 470 P.2d 330 (Okla. 1970).

24 State Farm Mut. Auto. Ins. Co. v. Bridges, 36 So. 3d 1142 (La. Ct. App. 2d Cir. 2010).

25 Bell v. State, 670 So. 2d 123 (Fla. 2d DCA 1996).

26 Coca Cola Bottling Co. v. Columbia Casualty Ins. Co., 11 Cal. App. 4th 1176, 14 Cal. Rptr. 2d 643 (4th Dist. 1992).

27 Capital City Ins. Co. v. Rick Taylor Timber Co., Inc., 918 F. Supp. 1558 (S.D. Ga. 1995), aff'd, 106 F.3d 417 (11th Cir. 1997).
As to equitable estoppel, generally, see Am. Jur. 2d, Estoppel and Waiver §§ 1 to 4.
As to effect of insurer's knowledge or reason to know of misrepresentation, see § 64.

28 Dukes v. South Carolina Ins. Co., 770 F.2d 545, 2 Fed. R. Serv. 3d 1246 (5th Cir. 1985).
As to admissions, generally, see Am. Jur. 2d, Evidence §§ 767 to 873.

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7 Am. Jur. 2d Automobile Insurance § 58

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Automobile Insurance

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II. Misrepresentations, Warranties, and Conditions by Insured

A. Effect, Generally

§ 58. Effect of statutes on insurer's right to rescind automobile insurance policy for misrepresentations by insured

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2954, 2962, 2968, 3006, 3006.1

A.L.R. Library

Cancellation of compulsory or "financial responsibility" automobile insurance, 44 A.L.R.4th 13

Rescission or avoidance, for fraud or misrepresentation, of compulsory, financial responsibility, or assigned risk automobile insurance, 83 A.L.R.2d 1104

In some jurisdictions, statutes have been enacted which are designed to relieve against the rigorous consequences of the common-law rules as to warranties and misrepresentations, particularly if made in good faith with no intent to deceive and in relation to a matter which does not increase the risk or contribute to the loss.[1] However, a state statute governing the notification and cancellation of automobile insurance policies has been construed as not abrogating an automobile insurer's common-law right to rescind a policy within a specified time after the policy is written on the grounds that the contract was void because of misrepresentation of fact.[2]

Statutes have also sometimes abolished, to some extent, the technical distinctions between warranties and representations, placing all statements upon the basis of representations or misrepresentations, so that the contract will not be avoided except under the circumstances as expressed in the particular statutory provision.[3] Some statutory provisions provide that no misrepresentation or false warranty made by an insured or in his or her behalf in the negotiation for a policy of insurance,

or breach of a condition of such policy, will defeat or avoid the policy or prevent its attaching unless such misrepresentation, false warranty, or condition has been stated in the policy or endorsement or rider attached thereto, or in the written application therefor, of which a copy is attached to or endorsed to the policy and made a part thereof, have been applied in construing automobile insurance policies.[4] Where a statute provides that no application for accident insurance is admissible in evidence in any action relative to the policy, or contract, unless a correct copy of the application is attached to or otherwise made a part of the policy or contract when issued and delivered, and a policy application for automobile liability insurance is not attached to or otherwise made a part of the automobile liability insurance policy, the insurer is precluded from raising the issue of material misrepresentation altogether.[5]

Some states have, by statute, in effect, abrogated an automobile insurer's common-law right of rescission for an intentional material misrepresentation.[6] An insurance misrepresentation statute preventing recovery under certain conditions does not provide that the contract instantly ceases to ever exist, because of an insured's misrepresentation; rather, it gives an insurer the right to rescind an insurance contract if the statutory criteria are met.[7] Statutes providing that an insurer may void a policy due to the insured's misrepresentations, omissions, or incorrect statements that are either fraudulent or material or would have, if disclosed, led the insurer to decline to issue the policy or to issue the policy at a higher premium, have also been applied in cases involving automobile insurance.[8] Furthermore, some state statutes have specifically listed, among the reasons for cancellation of auto insurance, the circumstance where the named insured has failed to disclose in his or her written application or in response to an inquiry by his or her broker, or by the insurer or its agent, information necessary for the acceptance or proper rating of the risk.[9]

By statute in some jurisdictions, the period of notice required for cancellation on the grounds of material misrepresentation is less than notice of cancellation generally required.[10]

Footnotes

1 Am. Jur. 2d, Insurance § 1003.

2 State Farm Ins. Co. v. American Service Ins. Co., 332 Ill. App. 3d 31, 265 Ill. Dec. 902, 773 N.E.2d 666 (1st Dist. 2002); Salazar v. Allstate Ins. Co., 549 Pa. 658, 702 A.2d 1038 (1997).
As to notice of termination of automobile insurance, generally, see §§ 50 to 56.

3 Am. Jur. 2d, Insurance §§ 1029, 1030.

4 Pekin Ins. Co. v. U.S. Credit Funding, Ltd., 212 Ill. App. 3d 673, 156 Ill. Dec. 789, 571 N.E.2d 769 (1st Dist. 1991).
As to the effect of a misrepresentation when in an application attached to the policy, see § 60.

5 Irving v. U.S. Fidelity & Guar. Co., 606 So. 2d 1365 (La. Ct. App. 2d Cir. 1992).

6 § 62.

7 Echo v. MGA Ins. Co., Inc., 157 So. 3d 507 (Fla. 1st DCA 2015).
Under Tennessee law, an insurance company is statutorily authorized to deny a claim if the insured obtains the policy after misrepresenting a matter that increased the company's risk of loss. Southern Trust Ins. Co. v. Morgan, 57 F. Supp. 3d 882 (E.D. Tenn. 2014).

8 Progressive Specialty Ins. Co. v. Rosing, 891 F. Supp. 378 (W.D. Ky. 1995); Government Employees Ins. Co. v. Decheona, 610 So. 2d 480 (Fla. 3d DCA 1992).
According to statute, the insurance company could only avoid the automobile insurance policy based on the insured's misrepresentations in the application if the insured made those misrepresentations with actual intent to deceive the insurer or if those misrepresentations materially affected the insurer's acceptance of the risk or hazard assumed, notwithstanding language in the policy purporting to grant the insurer the power to avoid the policy for other reasons. State Farm Ins. Co. v. American Service Ins. Co., 332 Ill. App. 3d 31, 265 Ill. Dec. 902, 773 N.E.2d 666 (1st Dist. 2002).

As to effect of statutory provisions pertaining to concealment, representations, warranties, and conditions with regard to insurance, generally, see Am. Jur. 2d, Insurance §§ 1003 to 1006.

9 Ramsdell v. State Auto Mut. Ins. Co., 206 Ga. App. 357, 425 S.E.2d 661 (1992); Mooney v. Nationwide Mut. Ins. Co., 149 N.H. 355, 822 A.2d 567 (2003).

10 Munroe v. Great American Ins. Co., 234 Conn. 182, 661 A.2d 581 (1995).

As to notice of cancellation of automobile insurance required to be given to the insured, generally, see § 53.

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7 Am. Jur. 2d Automobile Insurance § 59

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II. Misrepresentations, Warranties, and Conditions by Insured

A. Effect, Generally

§ 59. Effect of statutes on insurer's right to rescind automobile insurance policy for misrepresentations by insured—Compulsory insurance statutes; rights of injured third parties

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3009

A.L.R. Library

Rescission or avoidance, for fraud or misrepresentation, of compulsory, financial responsibility, or assigned risk automobile insurance, 83 A.L.R.2d 1104

Generally, an automobile insurer cannot, on the ground of fraud or misrepresentation, retrospectively avoid coverage under a compulsory or financial responsibility insurance law so as to escape liability to a third party.[1] A fraudulently obtained policy of automobile insurance is subject to rescission by the insurer, but an innocent third party injured by the insured before discovery of the fraud may look to the liability coverage in place at the time of injury up to the minimum mandatory insurance required by law.[2] Some states' compulsory insurance laws abrogate an insurance company's right to rescind an automobile insurance policy with regard to claims of persons not involved in making the misrepresentation, as where an innocent third party has suffered an injury from the insured's operation of an automobile; in such circumstances the automobile insurer is prohibited from rescinding the policy even where insurance coverage was procured through misrepresentations of the insured.[3] Where personal injury protection (PIP) coverage is compulsory for any automobile registered or principally garaged in a state, neither the applicant's failure to register a car principally garaged in the state, nor his subsequent misrepresentation would preclude a plaintiff's right of recovery; to hold otherwise and allow the insurer to declare a compulsory automobile liability insurance

policy void ab initio after a third party is injured simply because the insured was not a qualified applicant would undermine the legislative purpose of the state's no-fault act.[4]

On the other hand, in some states an insurer is entitled to rescind a policy ab initio on the basis of a material misrepresentation made in an application for no-fault insurance as long as it is relied upon by the insurer.[5] If an automobile insurer is able to establish that a no-fault policy was obtained through fraud, it is entitled to declare the policy void ab initio and rescind it, including denying the payment of personal injury protection benefits to innocent third parties.[6] The insurers' statutory right to rescission, when a misstatement or omission materially affects the insurer's risk or would have changed the insurer's decision whether to issue the policy, applies to the Motor Vehicle No-Fault Law, as Motor Vehicle No-Fault Law policies are not expressly excluded from the statutory right to rescission.[7] An automobile insurance applicant's fraudulent misrepresentation has been held to entitle an insurer to rescind an automobile insurance policy ab initio, even though third parties were injured in an accident with the applicant's vehicle on the basis that the injured parties had already received uninsured motorist benefits for their injuries, so that the policy of the State Financial Responsibility Act to compensate accident victims was upheld, and the real dispute was between insurance companies in a subrogation suit.[8] Furthermore, in some jurisdictions, as underinsured motorist coverage can be rejected, it is not considered a form of mandatory insurance coverage[9] as to which the defense of misrepresentation would be precluded as a matter of public policy.[10] Where there is no coverage at the time a third party is injured, and the applicant's subsequent fraudulent acts result in a policy being issued which ostensibly covers the accident which has already occurred, the rule prohibiting an insurance company from taking away coverage which existed when the injury occurred and the reasons for the rule do not to apply, the vehicle having not been registered or operated at the time of the injury as a result of or in reliance on insurer having insured the vehicle.[11] Additionally, where there is no compulsory insurance statute which requires one to insure oneself against his own property loss, when a case involves only the insured and the insurer, and the loss involves the insured's property, there is no public policy reason to hold that the insurance company's common-law right to rescission has been abrogated, and that to hold otherwise would permit an insured to benefit from his fraudulent misrepresentations and leave the insurer without a remedy.[12]

Where claims have been made by both an insured acquiring automobile insurance through fraudulent misrepresentation and an injured innocent third party, severance of the nonliability, noncompulsory features of the policy is proper, thereby permitting rescission ab initio as to the claim of the insured involving provisions not mandated by the applicable state no-fault act.[13] In some states, while fraud in an application for motor vehicle liability insurance is not a defense to the insurer's liability once injury has occurred with regard to the statutory minimum amount of coverage required, the insurer is not precluded by statute or public policy from asserting the defense of fraud as to any coverage in excess of the statutory minimum, which, if successful, would insulate the insurer against liability as to both the insured and the injured third party.[14] On the other hand, where an insurer's common-law right to void ab initio an automobile insurance policy when the applicant has made a material misrepresentation in the application for the policy has been statutorily abrogated with regard to the claim of persons not involved in making the misrepresentation, such common-law right has been abrogated as to the entire policy coverage.[15]

Footnotes

1 Midland Risk Management Co. v. Watford, 179 Ariz. 168, 876 P.2d 1203 (Ct. App. Div. 2 1994); Flushing Traditional Accupuncture, P.D. v. Auto Club Ins. Assn., 51 Misc. 3d 70, 31 N.Y.S.3d 739 (App. Term 2016). The Pennsylvania Supreme Court would not allow an assigned risk plan provider to rescind third-party benefits on the basis of the policyholder's fraud in his application. State Farm Mut. Auto. Ins. Co. v. Armstrong, 949 F.2d 99 (3d Cir. 1991).

2 DeMarco v. Stoddard, 223 N.J. 363, 125 A.3d 367 (2015), cert. denied, 137 S. Ct. 44, 196 L. Ed. 2d 28 (2016).

3 National Ins. Ass'n v. Peach, 926 S.W.2d 859 (Ky. Ct. App. 1996); Kambeitz v. Acuity Ins. Co., 2009 ND 166, 772 N.W.2d 632 (N.D. 2009).
Statutorily required automobile insurance coverage cannot be voided ab initio when an innocent third party has already been injured. National Independent Truckers Ins. Co. v. Gadway, 860 F. Supp. 2d 946 (D. Neb. 2012).

4 Fisher v. New Jersey Auto. Full Ins. Underwriting Ass'n By and Through Hanover Ins. Co., 224 N.J. Super. 552, 540 A.2d 1344 (App. Div. 1988).
As to PIP or "no-fault" insurance requirements, generally, see §§ 30 to 33.

5 21st Century Premier Ins. Co. v. Zufelt, 315 Mich. App. 437, 889 N.W.2d 759 (2016).

6 Bazzi v. Sentinel Ins. Co., 315 Mich. App. 763, 891 N.W.2d 13 (2016).

7 United Auto. Ins. Co. v. Salgado, 22 So. 3d 594 (Fla. 3d DCA 2009).

8 Colonial Penn Ins. Co. v. Guzorek, 690 N.E.2d 664 (Ind. 1997).
As to misrepresentations as to prior traffic violations, accidents, or license suspensions or revocations, generally, see §§ 79 to 81.
As to subrogation or reimbursement of automobile insurers, generally, see §§ 546 to 553.

9 As to nature and scope of statutory uninsured and underinsured motorist coverage, see § 34.

10 Platt v. National General Ins. Co., 205 Ga. App. 705, 423 S.E.2d 387 (1992).

11 As to unreported accident or loss on automobile insurance application, see § 81.

12 Ferrell v. Columbia Mut. Cas. Ins. Co., 306 Ark. 533, 816 S.W.2d 593 (1991).

13 Continental Western Ins. Co. v. Clay, 248 Kan. 889, 811 P.2d 1202 (1991).

14 Odum v. Nationwide Mut. Ins. Co., 101 N.C. App. 627, 401 S.E.2d 87 (1991).

15 Van Horn v. Atlantic Mut. Ins. Co., 334 Md. 669, 641 A.2d 195 (1994).

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7 Am. Jur. 2d Automobile Insurance § 60

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Automobile Insurance

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II. Misrepresentations, Warranties, and Conditions by Insured

A. Effect, Generally

§ 60. Effect of automobile insurance application's attachment to or incorporation in policy on insurer's right to rescind policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2982, 2983, 3006

A material misrepresentation in a written application for an automobile insurance policy, attached and made part of the policy, may defeat or avoid the policy.[1] Indeed, under some statutes, no misrepresentation or false warranty made by an insured will defeat or avoid the policy, or prevent its attaching, unless such misrepresentation or false warranty has been stated in the policy, in an endorsement or rider attached to the policy, or in an attached or endorsed written application which is made a part of the policy.[2] However, there is authority to the effect that, in the absence of such a statement, an application for a policy of automobile liability insurance need not be made a part of the policy, or attached to it, in order for the insurance company to deny coverage based on misrepresentations contained in such application.[3] Even so, an insurer may be required by statute to incorporate an application into the policy if the insurer is to be permitted to assert reliance upon a misrepresentation contained in the application.[4]

Where a statute provides that no application for accident insurance is admissible in evidence in any action relative to the policy, or contract, unless a correct copy of the application is attached to or otherwise made a part of the policy or contract when issued and delivered, and a policy application for automobile liability insurance is not attached to or otherwise made a part of the automobile liability insurance policy, the insurer is precluded from raising the issue of material misrepresentation altogether.[5]

Footnotes

1 Ratliff v. Safeway Ins. Co., 257 Ill. App. 3d 281, 195 Ill. Dec. 473, 628 N.E.2d 937 (1st Dist. 1993).

2 Pekin Ins. Co. v. U.S. Credit Funding, Ltd., 212 Ill. App. 3d 673, 156 Ill. Dec. 789, 571 N.E.2d 769 (1st Dist. 1991).

3 Medley v. Cimmaron Ins. Co., Inc., 514 S.W.2d 426 (Tenn. 1974).

4 Inter-Insurance Exchange of Chicago Motor Club v. Milwaukee Mut. Ins. Co., 61 Ill. App. 3d 928, 18 Ill. Dec. 927, 378 N.E.2d 391 (3d Dist. 1978).

The policy did not incorporate the application for insurance and did not clearly and unambiguously provide that the misstatement by the insured would render the policy void ab initio. James v. Safeco Ins. Co. of Illinois, 195 Ohio App. 3d 265, 2011-Ohio-4241, 959 N.E.2d 599 (8th Dist. Cuyahoga County 2011).

5 As to effect of statutes on insurer's right to rescind automobile insurance policy for misrepresentations by insured, see § 58.

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7 Am. Jur. 2d Automobile Insurance § 61

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II. Misrepresentations, Warranties, and Conditions by Insured

A. Effect, Generally

§ 61. Materiality of misrepresentations by insured voiding automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006

To void an automobile insurance policy based on a misrepresentation by the insured, the misrepresentation must generally have been a material one.[1] A misrepresentation on an insurance application is "material" if the knowledge or ignorance of it would naturally influence the judgment of the insurer in making the contract, or in estimating the degree and character of the risk, or in fixing the rate of premium.[2] Thus, an insurer which has issued a motor vehicle insurance policy, in the absence of compulsory insurance statutes affecting the rule,[3] generally may avoid the policy or liability thereon if, in procuring the insurance, the insured misrepresented a fact material to the risk[4] and the falsity of the representation was unknown to the insurer.[5] In some jurisdictions, the rule is that a misrepresentation in an application for automobile insurance will enable the insurer to avoid the policy if the misrepresentation is either material[6] or was made with actual intent to deceive.[7]

The test as to whether a misrepresentation is material, so as to permit an automobile insurer to avoid its obligations under the contract of insurance, is whether there has been a substantial increase in risk,[8] and knowledge of the truth would have reasonably influenced the insurer in accepting the risk or fixing the premium.[9] Materiality is determined by considering whether a reasonably careful and intelligent person would have regarded the facts omitted as substantially increasing the chances of the events insured against so as to cause a rejection of the application or different conditions such as higher premiums.[10] The view has also been followed that a misrepresentation with regard to automobile insurance is material merely if the insurer would have declined to issue the insurance had it known the true facts.[11] Even if information given by the applicant were false, if the insurance company would have issued the policy anyway, then it is not material.[12] Furthermore, in order to rescind a policy of automobile insurance, it must be proved that the alleged misrepresentation materially increased the risk of loss.[13] An insurance company's risk of loss increases, as would authorize an insurance company to deny a claim, if a misrepresentation

in an application naturally and reasonably influences the judgment of the insurer in making the contract; the misrepresentation need not involve a hazard that actually produced the loss in question.[14] No causal relation between the misrepresentation and the loss is necessary for the insurer to avail itself of the defense based on misrepresentation.[15] Statutes providing that no oral misrepresentation made by the insured, or in the insured's behalf, in the negotiation of insurance, may be deemed material unless made with intent to deceive and defraud, or unless the matter misrepresented increases the risk of loss, have also sometimes been applied in the context of automobile insurance disputes.[16] A material misrepresentation may result where an insured fails to disclose material information or provide complete information in response to a question.[17]

Ordinarily, the materiality of a misrepresentation in connection with automobile insurance is a question of fact,[18] so that summary judgment on such issue is inappropriate,[19] although if the evidence is such that there can be no reasonable difference of opinion as to the materiality, summary judgment may be appropriate.[20] However, there is some authority for the view that misrepresentations regarding prior refusals or cancellations of automobile insurance are material as a matter of law.[21] The question whether there was a misrepresentation must be decided in relation to the facts in existence at the time the representations were made and not to facts later developed.[22]

The finding by trial court that there has been material misrepresentation entitles the insurer to rescind its policy[23] and renders an automobile insurance policy null and void from the date of the policy's inception.[24] Where the insurer seeks to void obligations under a contract of automobile insurance, on the ground of misrepresentations made by the insured, the burden of proving materiality of the alleged misrepresentations is upon the insurer.[25]

Observation:

"Loss payable" clauses in automobile insurance policies, which protect the rights of a loss payee, such as banks, may allow recovery by a loss payee even where the insured has misrepresented material facts.[26]

Footnotes

1 RLI Ins. Co. v. Santos, 746 F. Supp. 2d 255 (D. Mass. 2010); American Centennial Ins. Co. v. Sinkler, 903 F. Supp. 408 (E.D. N.Y. 1995) (applying South Carolina law); Irving v. U.S. Fidelity & Guar. Co., 606 So. 2d 1365 (La. Ct. App. 2d Cir. 1992).

2 Integon Nat. Ins. Co. v. Villafranco, 228 N.C. App. 390, 745 S.E.2d 922 (2013).

3 As to compulsory insurance statutes and rights of injured third parties, see § 59.

4 Munroe v. Great American Ins. Co., 234 Conn. 182, 661 A.2d 581 (1995); Motors Ins. Corp. v. Marino, 623 So. 2d 814 (Fla. 3d DCA 1993).
A material misrepresentation made in an application for no-fault insurance entitles the insurer to rescind the policy. Lash v. Allstate Ins. Co., 210 Mich. App. 98, 532 N.W.2d 869 (1995).

5 As to effect of insurer's knowledge or reason to know of misrepresentation, see § 64.

6 Hanover Ins. Co. v. Leeds, 42 Mass. App. Ct. 54, 674 N.E.2d 1091 (1997).

7 As to intent and insured's knowledge of falsity of representations, see § 62.

8 T.J. Blake Trucking, Inc. v. Alea London, Ltd., 284 Ga. App. 384, 643 S.E.2d 762 (2007).

9 Nationwide Property and Casualty Insurance Company v. Faircloth, 845 F.3d 378 (8th Cir. 2016) (applying Arkansas law); Hanover Ins. Co. v. Leeds, 42 Mass. App. Ct. 54, 674 N.E.2d 1091 (1997).
The insureds received substantially reduced premiums as a result of the exclusion of the grandson from the policy, and while no intent to deceive may have existed at the formation of the exclusion, the insureds were unable to keep their promise to exclude the grandson, and that failure ripened into a misrepresentation affecting the degree of risk and the level of the premium. Commerce Ins. Co., Inc. v. Gentile, 85 Mass. App. Ct. 67, 5 N.E.3d 960 (2014), aff'd, 472 Mass. 1012, 36 N.E.3d 1243 (2015).

10 American Service Ins. Co. v. United Auto. Ins. Co., 409 Ill. App. 3d 27, 349 Ill. Dec. 745, 947 N.E.2d 382 (1st Dist. 2011).

11 Oakwood Healthcare, Inc. v. Hartford Ins. Co. of the Midwest, 2016 WL 6902033 (Mich. Ct. App. 2016); Granite State Fire Ins. Co. v. Roberts, 391 S.W.2d 825 (Tex. Civ. App. Beaumont 1965), writ refused n.r.e., (Oct. 6, 1965).

12 Prescott v. American Heartland Ins. Co., 2016 IL App (1st) 152932-U, 2016 WL 3461023 (Ill. App. Ct. 1st Dist. 2016); Jamshidi v. Shelter Mut. Ins. Co., 471 So. 2d 1141 (La. Ct. App. 3d Cir. 1985).

13 Nationwide Mut. Ins. Co. v. Mrs. Condies Salad Co., Inc., 141 P.3d 923 (Colo. App. 2006); Transamerican Ins. Co. v. Austin Farm Center, Inc., 354 N.W.2d 503 (Minn. Ct. App. 1984).

14 Southern Trust Ins. Co. v. Morgan, 57 F. Supp. 3d 882 (E.D. Tenn. 2014).

15 West v. Safeway Ins. Co. of Louisiana, 954 So. 2d 286 (La. Ct. App. 2d Cir. 2007).

16 Pryor v. State Farm Mut. Auto. Ins. Co., 663 So. 2d 112 (La. Ct. App. 3d Cir. 1995); Farmers State Bank of Russell v. Western Nat. Mut. Ins. Co., 454 N.W.2d 651 (Minn. Ct. App. 1990).

17 American Service Ins. Co. v. United Auto. Ins. Co., 409 Ill. App. 3d 27, 349 Ill. Dec. 745, 947 N.E.2d 382 (1st Dist. 2011).
As to concealment and failure to disclose information not specifically requested, see § 63.

18 Northern Assur. Co. of America v. Summers, 17 F.3d 956 (7th Cir. 1994).

19 Sanford v. Federated Guar. Ins. Co., 522 So. 2d 214 (Miss. 1988).

20 Hanover Ins. Co. v. Leeds, 42 Mass. App. Ct. 54, 674 N.E.2d 1091 (1997).

21 As to prior refusals or cancellations and materiality of misrepresentation as question of law or fact, see § 82.

22 Transamerican Ins. Co. v. Austin Farm Center, Inc., 354 N.W.2d 503 (Minn. Ct. App. 1984).

23 Oakwood Healthcare, Inc. v. Hartford Ins. Co. of the Midwest, 2016 WL 6902033 (Mich. Ct. App. 2016).

24 Progressive American Ins. Co. v. Papasodero, 587 So. 2d 500 (Fla. 2d DCA 1991).

25 State Farm Mut. Auto. Ins. Co. v. Bridges, 36 So. 3d 1142 (La. Ct. App. 2d Cir. 2010); Hanover Ins. Co. v. Leeds, 42 Mass. App. Ct. 54, 674 N.E.2d 1091 (1997).

26 Farmers State Bank of Russell v. Western Nat. Mut. Ins. Co., 454 N.W.2d 651 (Minn. Ct. App. 1990).

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7 Am. Jur. 2d Automobile Insurance § 62

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II. Misrepresentations, Warranties, and Conditions by Insured

A. Effect, Generally

§ 62. Insured's intentional misrepresentations for automobile insurance; insured's knowledge of falsity of representations

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006

Generally, an automobile insurer may rescind an automobile policy and declare the policy void ab initio where it was procured through the insured's intentional material misrepresentation,[1] at least where the common-law rule applies.[2] In this regard, in some jurisdictions, an automobile insurance applicant's intent to defraud the insurer is one of the elements which must be shown in order for the insurer to be entitled to rescind the insurance policy ab initio.[3] Also, in some states, in order to void an automobile insurance policy on the basis of misrepresentations in the insurance application, among the elements that the insurer has the burden of proving is that the applicant intentionally made the misrepresentation, with the intent to deceive,[4] materially affecting the risk,[5] although strict proof of fraud is not required.[6] Furthermore, the rule has been followed that in order to constitute a misrepresentation sufficient to defeat recovery on an automobile insurance policy, a material representation on an application for such a policy must be known by the insured to be false when made.[7] The intent to deceive must be determined from the attending circumstances which indicate the insured's knowledge of the falsity of the representations made in the application and his recognition of the materiality thereof, or from circumstances which create a reasonable assumption that the insured recognized the materiality of the misrepresentations.[8]

Observation:

A false representation of fact is an essential element of fraud either as the basis of an action for damages or as a ground for rescission.[9] If an inquiry is framed so that it does not clearly inform the insured of its meaning and the insured may have been

honestly mistaken as to what was intended, and his or her answer, by a fair and reasonable construction, may be considered a true one in response to the question as he or she understood it, such interpretation will be given, and a forfeiture precluded; thus, if an applicant could reasonably have understood a question as calling for a particular response and the response given in accordance with that understanding is not false, the response does not amount to a misrepresentation.[10]

On the other hand, under some statutes the rule is that if a misrepresentation by an automobile insurance applicant increases the risk of loss undertaken by the insurer, it is not necessary that the misrepresentation be made with intent to defraud in order for the insurer to have the right to avoid the policy, although otherwise such an intent to deceive is necessary.[11] Thus, in some jurisdictions the rule is that a misrepresentation in an application for automobile insurance will enable the insurer to avoid the policy if the misrepresentation is either material[12] or was made with the actual intent to deceive.[13] Furthermore, under some states' laws, the intent of the insured is irrelevant to finding a misrepresentation by an insured with regard to an automobile insurance policy, the sole consideration being whether there has, in fact, been a material misrepresentation of fact.[14] Thus, in some jurisdictions, an innocent misrepresentation in applying for automobile insurance will justify rescission of the policy so long as the misrepresentation is a material one, upon which the insurer has relied; this view has been supported by the rationale that an insured should not be unjustly enriched at an insurer's expense because of the insured's misrepresentation, even accepting that it was innocent.[15] Also, some states have in effect statutorily abrogated an automobile insurer's common-law right of rescission for an intentional material misrepresentation, as when a state legislature's inclusion of a cancellation provision specifically addressing material misrepresentations indicates that the legislature intended the applicable statute to be an insurer's exclusive remedy for misrepresentations, whether made intentionally or not.[16]

Observation:

While statutes is some states prohibit the rescission of automobile insurance policies for misrepresentations made by the insured, insofar as liability to injured third parties is concerned,[17] the public policy considerations present where an innocent third party must bear the risk of an intentional misrepresentation by the insured are not present where the person seeking to collect no-fault benefits is the same person who procured the insurance policy through fraud.[18]

Footnotes

1 West v. Safeway Ins. Co. of Louisiana, 954 So. 2d 286 (La. Ct. App. 2d Cir. 2007); Auto-Owners Ins. Co. v. Johnson, 209 Mich. App. 61, 530 N.W.2d 485 (1995).

2 Munroe v. Great American Ins. Co., 234 Conn. 182, 661 A.2d 581 (1995); Henriques v. New Jersey Mfs. Ins. Co. (Uninsured Motorist Claim), 2009 WL 5125021 (N.J. Super. Ct. App. Div. 2009).

As to rescission of contracts based on fraud or innocent misrepresentations, generally, see Am. Jur. 2d, Contracts § 537.

3 American Centennial Ins. Co. v. Sinkler, 903 F. Supp. 408 (E.D. N.Y. 1995) (referring to South Carolina law).

4 Willis v. Safeway Ins. Co. of Louisiana, 968 So. 2d 346 (La. Ct. App. 2d Cir. 2007).

5 Abshire v. Desmoreaux, 970 So. 2d 1188 (La. Ct. App. 3d Cir. 2007), writ denied, 978 So. 2d 326 (La. 2008).

6 State Farm Mut. Auto. Ins. Co. v. Bridges, 36 So. 3d 1142 (La. Ct. App. 2d Cir. 2010).

As to fraud, generally, see Am. Jur. 2d, Fraud and Deceit §§ 1 to 11.

7 Pericles v. MGA Ins. Co., Inc., 567 Fed. Appx. 804 (11th Cir. 2014) (applying Florida law); Middlesex Mut. Assur. Co. v. Walsh, 218 Conn. 681, 590 A.2d 957 (1991).

8 State Farm Mut. Auto. Ins. Co. v. Bridges, 36 So. 3d 1142 (La. Ct. App. 2d Cir. 2010).

9 As to necessity of false representation and definiteness, see Am. Jur. 2d, Fraud and Deceit § 32.

10 Christy v. Travelers Indem. Co. of America, 810 F.3d 1220 (10th Cir. 2016) (applying New Mexico law); Middlesex Mut. Assur. Co. v. Walsh, 218 Conn. 681, 590 A.2d 957 (1991).

As to concealment and failure to disclose information not specifically requested, see § 63.

11 Crest v. State Farm Mut. Auto. Ins. Co., 20 Ill. App. 3d 382, 313 N.E.2d 679 (2d Dist. 1974); Farmers State Bank of Russell v. Western Nat. Mut. Ins. Co., 454 N.W.2d 651 (Minn. Ct. App. 1990).

12 As to materiality of misrepresentations, generally, see § 61.

13 Hanover Ins. Co. v. Leeds, 42 Mass. App. Ct. 54, 674 N.E.2d 1091 (1997).

14 Privilege Underwriters Reciprocal Exchange v. Clark, 174 So. 3d 1028 (Fla. 5th DCA 2015), review denied, 2016 WL 743007 (Fla. 2016).

Any warranty that is not literally true will invalidate the insurance policy. Safeway Ins. Co. v. Dukes, 185 So. 3d 977 (Miss. 2015).

To rescind a policy for no-fault insurance on the basis of a material misrepresentation made in an application therefor, it is not necessary that the misrepresentation be intentional. Lash v. Allstate Ins. Co., 210 Mich. App. 98, 532 N.W.2d 869 (1995).

15 Lash v. Allstate Ins. Co., 210 Mich. App. 98, 532 N.W.2d 869 (1995).

A material misrepresentation in an application for automobile insurance, whether or not made with knowledge of its correctness or untruth, will nullify any policy. Motors Ins. Corp. v. Marino, 623 So. 2d 814 (Fla. 3d DCA 1993).

16 Munroe v. Great American Ins. Co., 234 Conn. 182, 661 A.2d 581 (1995).

17 As to compulsory insurance statutes and rights of injured third parties, see § 59.

18 Auto-Owners Ins. Co. v. Michigan Com'r of Ins., 141 Mich. App. 776, 369 N.W.2d 896 (1985).

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7 Am. Jur. 2d Automobile Insurance § 63

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II. Misrepresentations, Warranties, and Conditions by Insured

A. Effect, Generally

§ 63. Insured's concealment of, or failure to disclose, information not specifically requested for automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 2962, 3006, 3006.1

A.L.R. Library

Automobile insurance: concealment or nondisclosure of physical defects or conditions as avoiding coverage, 72 A.L.R.3d 804

"Concealment," in the law of insurance, is defined as the designed and intentional withholding of any fact material to the risk which the insured in honesty and good faith ought to communicate to the insurer.[1] Generally, to entitle a motor vehicle insurer to avoid the policy, a concealment must at least involve a matter material to the risk.[2] For example, a truck driver could not retroactively procure coverage for an accident through his own fraud, where there was no policy of insurance in effect at the time of the morning accident due to the truck driver's failure to pay his premium, and the truck driver fraudulently obtained the insurance policy later that afternoon by deliberately concealing the fact that he had been in an accident earlier that day.[3]

Absent fraud, an automobile insurance applicant's failure to disclose facts about which no questions were asked of him or her will not avoid the policy.[4] If the insurer propounds questions to the applicant and the applicant makes full and true answers, the applicant is not answerable for an omission to mention the existence of other facts about which no inquiry is made of the applicant, although they may turn out to be material for the insurer to know in taking the risk.[5]

Footnotes

1 As to concealment and duty of good faith, see Am. Jur. 2d, Insurance § 1000.

2 Givens v. Southern Farm Bureau Cas. Ins. Co., 197 So. 2d 380 (La. Ct. App. 2d Cir. 1967), writ refused, 250 La. 902, 199 So. 2d 916 (1967).
As to insurer's right to rescind automobile insurance policy for misrepresentations by insured, see § 57.
As to materiality of misrepresentations, see § 61.

3 North Carolina Farm Bureau Mut. Ins. Co. v. Simpson, 198 N.C. App. 190, 678 S.E.2d 753 (2009).

4 Transamerican Ins. Co. v. Austin Farm Center, Inc., 354 N.W.2d 503 (Minn. Ct. App. 1984).

5 Clarendon Nat. Ins. Co. v. H & G Transport, Inc., 290 Fed. Appx. 62 (9th Cir. 2008).
As to effect of inquiry or lack of inquiry by insurer, see Am. Jur. 2d, Insurance § 1009.

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II. Misrepresentations, Warranties, and Conditions by Insured

A. Effect, Generally

§ 64. Effect of automobile insurer's knowledge or reason to know of misrepresentation by insured

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006

Reliance by an automobile insurer on an insured's misrepresentations, is an element required in some jurisdictions to avoid an automobile insurance policy.[1] Thus, an insurer cannot avoid its obligations under a policy issued on the basis of a misrepresentation where it was aware of the true facts at the time the automobile insurance policy was issued.[2] Furthermore, automobile insurers with knowledge or reason to know that a misrepresentation was made are estopped from rescinding coverage.[3] Thus, an automobile insurer waived a provision of the insurance policy creating an option to void the policy based on a material misrepresentation by the insured, where the insurer was aware of the insured's misrepresentations as to the person who drove and garaged the insured vehicle, but the insurer nevertheless renewed the policy multiple times after becoming aware of the misrepresentations.[4] However, an insurer cannot be found to have waived misrepresentations due to information in its possession at the time of application unless that insurer had clear notice or was fully cognizant of the facts.[5]

Observation:

The fact that an automobile insurer's agent has knowledge of misrepresentations by the insured will not always result in the imputation of such knowledge to the insurer so as to defeat the right of the insurer to rescind the automobile insurance policy.[6]

Footnotes

1 Perez v. Old American County Mut. Fire Ins. Co., 2010 WL 3168389 (Tex. App. Houston 14th Dist. 2010).
As to insurer's right to rescind automobile insurance policy for misrepresentations by insured, see § 57.

2 Bankers Life & Cas. Co. v. Long, 345 So. 2d 1321 (Ala. 1977).

3 American Centennial Ins. Co. v. Sinkler, 903 F. Supp. 408 (E.D. N.Y. 1995) (interpreting South Carolina law); Government Employees Ins. Co. v. Govan, 451 A.2d 884 (D.C. 1982).
As to equitable estoppel, generally, see Am. Jur. 2d, Estoppel and Waiver §§ 1 to 4.

4 Green v. Brown, 51-152 La. App. 2 Cir. 2/15/17, 2017 WL 604994 (La. Ct. App. 2d Cir. 2017).

5 State Auto. Mut. Ins. Co. v. Spray, 547 F.2d 397 (7th Cir. 1977) (applying Kentucky law).
As to insurer's duty to investigate insured's representations for automobile insurance policy, see § 65.

6 Northern Assur. Co. of America v. Summers, 17 F.3d 956 (7th Cir. 1994).
As to insurance agents and brokers, generally, see Am. Jur. 2d, Insurance §§ 109 to 119.

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7 Am. Jur. 2d Automobile Insurance § 65

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II. Misrepresentations, Warranties, and Conditions by Insured

A. Effect, Generally

§ 65. Insurer's duty to investigate insured's representations for automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006

While automobile insurers with knowledge or reason to know that a misrepresentation was made are estopped from rescinding coverage,[1] such an insurer is entitled to rely on an applicant's answers to specific questions, and has no obligation to make an independent query as to their truth.[2] Generally, there is no affirmative duty upon an insurer to make an independent investigation to ascertain the truthfulness of representations the applicant makes on an application for an automobile policy.[3] However, where an insurer has knowledge of a misrepresentation by an insured on an automobile insurance application, it may be placed under a duty to make further inquiry, and where it fails to do so, and a reasonable inquiry would have revealed a misrepresentation, the insurer is chargeable with knowledge thereof and may not rescind the policy on the basis of such misrepresentation.[4]

Furthermore, the view has sometimes been followed, at least with respect to liability insurance, that an insurer, even in the absence of grounds for suspecting that the insured has made misrepresentations, owes a duty to the insured as well as to the public to make a reasonable investigation of the insurability of the applicant within a reasonable time after accepting his application for a policy, and that the insurer cannot neglect that duty or postpone the investigation until after it learns of a probable claim and still retain its right to rescind for misrepresentations in the application.[5] A duty to investigate, which has been said to be imposed because of the insurer's role as a public service entity, inures directly to the benefit of third persons injured by the insured.[6]

Footnotes

1 As to effect of insurer's knowledge or reason to know of misrepresentation for automobile insurance policy, see § 64.

2 American Centennial Ins. Co. v. Sinkler, 903 F. Supp. 408 (E.D. N.Y. 1995) (interpreting South Carolina law).

3 Countryside Cas. Co. v. Orr, 523 F.2d 870 (8th Cir. 1975) (applying Arkansas law).

4 Government Employees Ins. Co. v. Govan, 451 A.2d 884 (D.C. 1982).

5 State Farm Mut. Auto. Ins. Co. v. Wood, 25 Utah 2d 427, 483 P.2d 892 (1971).

6 Barrera v. State Farm Mut. Auto. Ins. Co., 71 Cal. 2d 659, 79 Cal. Rptr. 106, 456 P.2d 674 (1969).

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7 Am. Jur. 2d Automobile Insurance II B Refs.

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II. Misrepresentations, Warranties, and Conditions by Insured

B. Identity, Name, or Marital Status of Insured

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3020, 3066

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance
A.L.R. Index, Automobile Collision Insurance
A.L.R. Index, Automobile Insurance
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7 Am. Jur. 2d Automobile Insurance § 66

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II. Misrepresentations, Warranties, and Conditions by Insured

B. Identity, Name, or Marital Status of Insured

§ 66. Misrepresentation of identity or name of insured for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3066

A.L.R. Library

Insured's misrepresentation or misstatement as to his name or marital status as ground for avoiding liability insurance, 27 A.L.R.3d 849

Generally, representations as to the identity of the named insured in an automobile liability policy and the precise nature of his or her interests are material to the risk and entitle the insurer to disclaim liability if full disclosure is not made.[1] Thus, an insurance company may avoid a policy issued pursuant to an application in which the applicant uses the name of another person, apparently for the purpose of preventing discovery of facts which would adversely affect the eligibility of the applicant to obtain the insurance sought.[2]

However, a vehicle owner's alleged misrepresentations in the application for automobile insurance, falsely indicating that the owner was male rather than female, and indicating that the owner was the only driver in the household, were not material, as would support voiding the policy following a traffic accident that occurred while the vehicle was being driven by the owner's brother, who shared an apartment with the owner, where the unrebutted evidence established that the owner was not a licensed driver, but purchased the vehicle with the intent that her brother drive it, such that the number of drivers covered under the policy was ultimately the same as the number of drivers disclosed by the owner, a true statement of facts would not have rendered

the owner uninsurable, but would only have caused the policy to be classified as a nonowned vehicle policy with an increased premium, and there was no showing that the misrepresentation was intentional.[3]

Footnotes

1 American Service Mut. Ins. Co. v. Parviz, 153 Colo. 490, 386 P.2d 982 (1963).

2 Bade v. Badger Mut. Ins. Co., 31 Wis. 2d 38, 142 N.W.2d 218 (1966).

3 Direct Auto Ins. Co. v. Beltran, 2013 IL App (1st) 121128, 376 Ill. Dec. 182, 998 N.E.2d 892 (App. Ct. 1st Dist. 2013).

7 Am. Jur. 2d Automobile Insurance § 67

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II. Misrepresentations, Warranties, and Conditions by Insured

B. Identity, Name, or Marital Status of Insured

§ 67. Misrepresentation of marital status of insured for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3020, 3066

A.L.R. Library

Insured's misrepresentation or misstatement as to his name or marital status as ground for avoiding liability insurance, 27 A.L.R.3d 849

A misrepresentation of one's marital status will not warrant the rescission of an automobile insurance policy where such misrepresentation is not material to the risk assumed by the insurer,[1] and there is no intent by the insured to deceive the insurer.[2] This is true even though the unmarried applicant, who indicates that he or she is married, may at the time be living with a person of the opposite sex.[3] However, a misrepresentation that an insured is married to a member of the insured's household, who is an authorized driver of the insured vehicle, affects the premium charged by the insurer and is therefore material to the risk, entitling the insurer to rescind the policy.[4]

Where an automobile insurance applicant's incorrect statement that she was divorced, rather than separated from her spouse, caused an automobile insurer not to investigate the record of the applicant's husband when it otherwise would have done so if the applicant had disclosed that she was separated rather than divorced, the insurer was entirely justified in voiding the wife's policy where the driving record of the applicant's husband would have stopped the insurer from issuing the policy.[5]

Footnotes

1 Safe Auto Ins. Co. v. Farm Bur. Ins. Co., 867 N.E.2d 221 (Ind. Ct. App. 2007); Williams v. Allstate Ins. Co., 2007 WL 284514 (Mich. Ct. App. 2007).

2 Irving v. U.S. Fidelity & Guar. Co., 606 So. 2d 1365 (La. Ct. App. 2d Cir. 1992).
As to some state statutes prohibiting the cancellation of an automobile insurance policy on the basis of marital status, see § 51.

3 Bunn v. Monarch Life Ins. Co., 257 Or. 409, 478 P.2d 363 (1970).

4 Henriques v. New Jersey Mfs. Ins. Co. (Uninsured Motorist Claim), 2009 WL 5125021 (N.J. Super. Ct. App. Div. 2009).

5 Government Employees Ins. Co. v. Decheona, 610 So. 2d 480 (Fla. 3d DCA 1992).
As to misrepresentations concerning insurance applicants' or drivers' driving records, generally, see §§ 79 to 81.

7 Am. Jur. 2d Automobile Insurance II C Refs.

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II. Misrepresentations, Warranties, and Conditions by Insured

C. Identification, Registration, and Ownership of Vehicle

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West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance
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A.L.R. Index, Automobile Insurance
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II. Misrepresentations, Warranties, and Conditions by Insured

C. Identification, Registration, and Ownership of Vehicle

§ 68. Misrepresentation pertaining to identification and description of vehicle for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3066

In some jurisdictions, a misrepresentation of the age of a motor vehicle is considered material in some circumstances; where it is, the insured is barred from recovering insurance proceeds without a showing that the insured intended to misrepresent the age of the vehicle.[1] However, a partial misdescription of an automobile will not bar a recovery if the misdescription is minor and unintentional.[2] Furthermore, a condition in an automobile fire insurance policy limiting liability to the amount of premiums in the event the insured did not truly state any fact or representation made in the declaration, would not limit the insurer's liability because of the misstatement of the automobile serial number, in the absence of an intent to deceive or an increase in the risk of loss, where the misstatement of the automobile serial number did not per se increase the risk of loss because all other statements with reference to the make, trade name, age or year model, and whether it was purchased new, were true.[3]

Footnotes

1 Dukes v. South Carolina Ins. Co., 770 F.2d 545, 2 Fed. R. Serv. 3d 1246 (5th Cir. 1985).

2 Gatti v. American Bankers Ins. Co. of Fla., 164 So. 2d 840 (Fla. 3d DCA 1964).

3 General Mut. Ins. Co. v. Ginn, 283 Ala. 470, 218 So. 2d 680 (1969).

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II. Misrepresentations, Warranties, and Conditions by Insured

C. Identification, Registration, and Ownership of Vehicle

§ 69. Misrepresentation pertaining to registration of vehicle for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

Registration of a motor vehicle may be a condition precedent to the commencement of insurance coverage of such vehicle, such as under a state assigned risk plan.[1] Furthermore, where an insured has misrepresented that the insured automobile was registered, the automobile insurance policy issued may be declared void ab initio as to the insured, although, under such circumstances, the insurer may not avoid liability under the policy to a passenger of the insured, who was injured in an automobile accident.[2]

Footnotes

1 Fisher v. New Jersey Auto. Full Ins. Underwriting Ass'n By and Through Hanover Ins. Co., 224 N.J. Super. 552, 540 A.2d 1344 (App. Div. 1988); Gotta v. Allstate Ins. Co., 154 A.D.2d 651, 546 N.Y.S.2d 656 (2d Dep't 1989).

2 Fisher v. New Jersey Auto. Full Ins. Underwriting Ass'n By and Through Hanover Ins. Co., 224 N.J. Super. 552, 540 A.2d 1344 (App. Div. 1988).

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II. Misrepresentations, Warranties, and Conditions by Insured

C. Identification, Registration, and Ownership of Vehicle

§ 70. Misrepresentation pertaining to sole or unconditional ownership; automobile property insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

Automobile property insurance: sole, unconditional, or absolute ownership clause, 71 A.L.R.2d 223

Automobile insurance policies covering property sometimes contain provisions to the effect that the policies will be void if the interest of the insured is other than that of an unconditional and sole owner.[1] Such provisions have been deemed to be valid and enforceable,[2] unless waived.[3] Ownership is "sole" within the meaning of a motor vehicle theft, fire, or collision policy when no other has any interest in the vehicle as owner,[4] and ownership is "unconditional" when the title is not limited or affected by any condition.[5]

With regard to the time at which such ownership of a vehicle must exist, a sole and unconditional ownership provision in a fire insurance policy refers to the time the policy was issued,[6] although in an action on a collision policy the sole ownership requirement has been applied to the time of loss as well as to the time the policy was issued.[7] One who enters into a contract to sell an automobile is generally found to be the sole and unconditional owner required by a fire or collision insurance policy.[8]

However, where the prospective purchaser is in possession of the vehicle, the seller may have lost his or her sole ownership interest.[9]

The purchaser of a stolen vehicle generally does not acquire the sole ownership required by a policy and the policy issued to such a purchaser will be held void.[10]

Footnotes

1 Atlantic Cas. Ins. Co. v. Interstate Ins. Co., 28 N.J. Super. 81, 100 A.2d 192 (App. Div. 1953).
The breach of a warranty in an automobile theft policy that the named insured was the sole owner of the automobile increased the risk of loss and thus was material to the risk. New Amsterdam Cas. Co. v. Goldstein, 352 Mass. 492, 226 N.E.2d 262 (1967).
As to the requirement that one have an "insurable interest" in a motor vehicle, see §§ 17 to 20.
As to the meaning of the term "ownership" with respect to risks covered by automobile insurance, generally, see § 95.
As to the ownership requirement under the "owned automobile" coverage of automobile liability insurance, see § 188.

2 Burpo v. Resolute Fire Ins. Co., 90 Ohio App. 492, 48 Ohio Op. 178, 107 N.E.2d 227 (8th Dist. Cuyahoga County 1951).

3 Aetna Cas. & Sur. Co. v. Jackson, 203 Ark. 839, 159 S.W.2d 461 (1942).

4 Gurley v. Phoenix Ins. Co., 233 Miss. 58, 101 So. 2d 101, 71 A.L.R.2d 221 (1958).

5 Alamo Cas. Co. v. William Reeves & Co., 258 S.W.2d 211 (Tex. Civ. App. Fort Worth 1953).

6 Evens v. Home Ins. Co. of New York, 231 Mo. App. 932, 82 S.W.2d 111 (1935).

7 Crabb v. Calvert Fire Ins. Co., 255 S.W.2d 990 (Ky. 1953).

8 Fish v. Connecticut Fire Ins. Co., 241 Wis. 166, 5 N.W.2d 779 (1942).
A finding that the insured had not violated the sole ownership clause of an automobile liability policy was supported under evidence that the insured had legal title, was obligated to pay the bank the balance owing on the car, and had purchased the policy, though he was to transfer the car to a minor when the minor had reimbursed him for the cost of the car. Cimarron Ins. Co. v. Price, 409 S.W.2d 601 (Tex. Civ. App. Austin 1966), writ refused n.r.e., (Mar. 1, 1967).

9 Borger v. Morrow, 87 S.W.2d 758 (Tex. Civ. App. Amarillo 1935).

10 Hackett v. Utica Mut. Ins. Co., 370 Mass. 246, 346 N.E.2d 917 (1976).
Where an automobile dealer purchased a stolen automobile, not knowing that it had been stolen, such automobile, when stolen in turn from the dealer, was not covered by his theft insurance policy covering only automobiles of which he was the sole owner. Gurley v. Phoenix Ins. Co., 233 Miss. 58, 101 So. 2d 101, 71 A.L.R.2d 221 (1958).
As to the insurable interest of a purchaser of a stolen motor vehicle, see § 19.

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II. Misrepresentations, Warranties, and Conditions by Insured

C. Identification, Registration, and Ownership of Vehicle

§ 71. Misrepresentation pertaining to sole or unconditional ownership; automobile liability insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006

A.L.R. Library

Automobile liability insurance: sole, unconditional, or absolute ownership clause, 71 A.L.R.2d 267

Misrepresentation by applicant for automobile liability insurance as to ownership of vehicle as material to risk, 33 A.L.R.2d 948

Trial Strategy

Insurance Agent's or Broker's Failure to Procure Insurance, 10 Am. Jur. Proof of Facts 3d 579

Automobile Insurer's Waiver of Policy Restriction, 27 Am. Jur. Proof of Facts 2d 683

A false representation made by an applicant and named insured by the declaration that he or she is the sole owner of the vehicle, when, in fact, he or she knows it to be owned solely by another to whom the insurer would not issue the policy because of his or her age, is material to the risk of a policy of automobile liability insurance, and is sufficient for avoidance of the policy.[1] The

fact that the policy contains an omnibus clause including as an "insured" any person using the automobile with the permission of the named insured does not affect the materiality of such false representations, since the insurer may reasonably assume that ordinarily the primary use of an automobile will be by the owner and named insured.[2] Similarly, the failure of an applicant to disclose multiple ownership of a motor vehicle in an application for liability insurance may constitute a misrepresentation voiding such policy,[3] especially when the undisclosed co-owner of the vehicle is of an age as to which the accident rate is substantially higher than that of the applicant.[4] However, for example, even where the applicant represents that he is the sole owner of an automobile, although it is actually owned jointly by him and his 19-year-old son, such misrepresentation is not material in the absence of a showing that the insurer would have rejected the risk or charged a higher premium if it had known that the minor son was a joint owner of the car with his father.[5] Further, under a statutory standard that, for policies other than life, health, and accident, misrepresentations barred recovery only if made with the intent to deceive, there is no such intent to deceive where a father's application for an automobile insurance liability policy states that he owns a car that in fact belongs to his son, but the application also states that the son is to be the principal operator of the car.[6]

A corporation's misrepresentation that it owns a car which is actually owned by an employee is not material to the risk where the use of the car at the time of the accident is within the terms of the policy.[7] However, automobile insurance is properly voided by an insurer for a misrepresentation in an application after the insured represented that a pickup truck owned by his corporation was titled in his name and was not used for business purposes, since such misrepresentation was material in that the insurer would not have issued the policy had it known the truth since its underwriting guidelines prohibited it from insuring vehicles owned by corporations.[8] A business owner's misrepresentations as to ownership and use of his son's vehicle on a commercial automobile insurance policy application were material, and therefore, the insurer was entitled to rescind its policy as a matter of law, where the owner misrepresented the ownership, use, and primary driver of the vehicle by stating that the vehicle was owned by the business and used for commercial purposes and failing to list the son as a driver, and the insurance agent testified that, given the correct information, the insurer would not have insured the vehicle.[9] Similarly, a vehicle titled in the name of a sole proprietor, remained the owner of the vehicle where the partnership transferred assets to a corporation, and, thus, was no longer covered under the insurance policy.[10]

As a rule, an automobile insurer cannot, on the ground of fraud or misrepresentation, retrospectively avoid coverage under a compulsory or financial responsibility insurance law so as to escape liability to a third party.[11] Thus, a named insured's misrepresentation to an insurer that he, rather than the driver involved in an accident, was the owner of a car, is not a defense to a third party's claims against the driver arising out of the accident.[12] Additionally, an insurer ordinarily cannot avoid its obligations under a policy issued on the basis of a misrepresentation where it was aware of the true facts at the time the automobile insurance policy was issued.[13] Thus, where the circumstances indicate that an agent of the insurer was aware that the named insured did not enjoy complete and undivided ownership of the insured vehicle, the insurer may be found to have waived, or to be estopped to assert, the sole and unconditional ownership clause appearing in the policy.[14] However, where limitations on the agent's authority are contained in the application or policy the insured is charged with notice thereof and cannot hold the company bound merely because the soliciting agent knew that the insured was not the true owner of the vehicle.[15]

Footnotes

1 Didlake v. Standard Ins. Co., 195 F.2d 247, 33 A.L.R.2d 941 (10th Cir. 1952).
An insured's assertion in an automobile insurance application that she was the owner of the vehicle she was attempting to insure was a material misrepresentation warranting rescission of the insurance contract pursuant to statute, where the insured was not a registered owner of the vehicle. Echo v. MGA Ins. Co., Inc., 157 So. 3d 507 (Fla. 1st DCA 2015).

As to certificate of title or name in which vehicle is registered on ownership status; misrepresentations as to title, see § 72.

2 Didlake v. Standard Ins. Co., 195 F.2d 247, 33 A.L.R.2d 941 (10th Cir. 1952).

3 Transamerican Ins. Co. v. Austin Farm Center, Inc., 354 N.W.2d 503 (Minn. Ct. App. 1984).

4 Safeway Ins. Co. v. Duran, 74 Ill. App. 3d 846, 30 Ill. Dec. 652, 393 N.E.2d 688 (1st Dist. 1979).

5 Scott v. State Farm Mut. Auto. Ins. Co., 202 Va. 579, 118 S.E.2d 519 (1961).

6 DiGerolamo v. Liberty Mut. Ins. Co., 364 So. 2d 939 (La. 1978).

As to the insured's intent, generally, as a factor affecting the consequences of misrepresentations in automobile insurance policies, see § 62.

7 Hawkeye-Security Ins. Co. v. Presbitero & Sons, Inc., 209 F.2d 281 (7th Cir. 1954) (applying Illinois law).

8 Pryor v. State Farm Mut. Auto. Ins. Co., 663 So. 2d 112 (La. Ct. App. 3d Cir. 1995).

9 Oakwood Healthcare, Inc. v. Hartford Ins. Co. of the Midwest, 2016 WL 6902033 (Mich. Ct. App. 2016).

10 Carolina Cas. Ins. Co. v. Williams, 945 So. 2d 1030 (Ala. 2006).

11 As to compulsory insurance statutes and rights of injured third parties, see § 59.

12 Willms v. Zangl, 119 Wis. 2d 58, 349 N.W.2d 95 (Ct. App. 1984).

13 As to effect of insurer's knowledge or reason to know of misrepresentation for automobile insurance policy, see § 64.

14 Rea v. Hardware Mut. Cas. Co., 15 N.C. App. 620, 190 S.E.2d 708 (1972).

As to waiver and estoppel to assert forfeitures and conditions of insurance policies, generally, see Am. Jur. 2d, Insurance §§ 1552 to 1560.

As to equitable estoppel, generally, see Am. Jur. 2d, Estoppel and Waiver §§ 1 to 4.

15 Employers Mut. Fire Ins. Co. v. Cunningham, 253 S.W.2d 393 (Ky. 1952).

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7 Am. Jur. 2d Automobile Insurance § 72

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II. Misrepresentations, Warranties, and Conditions by Insured

C. Identification, Registration, and Ownership of Vehicle

§ 72. Certificate of title or name in which vehicle is registered on ownership status; misrepresentations as to title for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

Automobile liability insurance: sole, unconditional, or absolute ownership clause, 71 A.L.R.2d 267

Automobile property insurance: sole, unconditional, or absolute ownership clause, 71 A.L.R.2d 223

Although a motor vehicle is registered, or a certificate of title to the vehicle has been taken, in the name of one other than the insured,[1] the insured may nevertheless be deemed to be an sole and unconditional owner of the vehicle, under a sole and unconditional ownership clause in an automobile property insurance policy, if such is the fact.[2] This is true, for example, where an insured truck is registered in the name of the insured's son but the uncontradicted testimony of the insured is to the effect that the insured owned the truck both at the time of the application for insurance and at the time of the loss.[3] In the case of liability insurance, a title certificate is not conclusive evidence of ownership, so that the sole ownership provision of the policy was not violated where the insured was the sole owner but title was taken in the name of an employee as a matter of convenience.[4] Thus, where the title to motor vehicles was put in the name of a corporation by its general manager, who retained a substantial interest in the vehicles, and the corporation obtained a liability policy containing a statement that the corporation was the sole owner of the vehicles, the insurer failed to show that the vehicles were not owned by the corporation within the meaning of the policy.[5]

Where there is noncompliance with statutes regulating the sale or transfer of motor vehicles, including statutes concerning certificates of title, there is authority for the view that, with regard to automobile liability insurance, an insured transferee is covered despite such noncompliance.[6] In addition, there is some authority for the view that equitable title passes upon consummation of the sale, notwithstanding the failure of the parties to comply with the statute governing such sales, and that the buyer thereupon becomes the owner, and the seller is no longer the owner within the contemplation of the sole and unconditional ownership clauses.[7] Similarly, where a person purchased a vehicle in a state other than the state of his residence, and was unable to obtain a certificate of title in the state of his residence, because of alleged irregularities in the registration certificate obtained in the state of the purchase, ownership was nevertheless established so as to preclude the insurer from avoiding its obligations under a theft policy issued to the insured.[8] However, the words "owner" and "ownership," as used in a liability policy, have also been construed and applied as those words were defined in statutes relating to title to automobiles, so that where an automobile was sold by the owner with full payment of the agreed price and delivery of possession to the purchaser, but the assignment and delivery of the certificate of title were deferred, a change in ownership was not consummated in accordance with the statute; in this case, the seller's liability policy continued in force until the consummation of the sale by assignment and delivery of the certificate of title.[9]

A misrepresentation as to whom the title to a motor vehicle was or would be in does not invalidate the automobile insurance policy where such misrepresentation is not material.[10] Also, where the car was in fact purchased and paid for by another person, an automobile liability insurer cannot disclaim liability on the ground that the named insured in whose name title to the car is registered has misrepresented "ownership," given the analytical difficulties in the concept of "ownership," the principles that insurance policies are strictly construed and that ambiguity in such policies are construed in favor of insureds, and the absence of fraudulent intent.[11]

Footnotes

1 An insured's assertion in an automobile insurance application that she was the owner of the vehicle she was attempting to insure was a material misrepresentation warranting rescission of the insurance contract pursuant to statute, where the insured was not a registered owner of the vehicle. Echo v. MGA Ins. Co., Inc., 157 So. 3d 507 (Fla. 1st DCA 2015).
As to misrepresentation pertaining to sole or unconditional ownership; automobile liability insurance, see § 71.

2 Wood v. Merchants Ins. Co. of Providence, 291 Mich. 573, 289 N.W. 259 (1939).

3 Marino v. Firemen's Ins. Co. of Newark, N. J., 345 Ill. App. 540, 104 N.E.2d 317 (2d Dist. 1952).
As to the burden of proving ownership or lack thereof, see §§ 70, 71.

4 U.S. Cas. Co. v. Bain, 191 Va. 717, 62 S.E.2d 814 (1951).

5 Kietlinski v. Interstate Transp. Lines, Inc., 3 Wis. 2d 451, 88 N.W.2d 739 (1958).

6 National Farmers Union Property & Cas. Co. v. Colbrese, 368 F.2d 405 (9th Cir. 1966).

7 Hicksbaugh Lumber Co. v. Fidelity & Cas. Co. of New York, 177 S.W.2d 802 (Tex. Civ. App. Galveston 1944).

8 Friedman v. Royal Globe Ins. Companies, 137 N.J. Super. 192, 348 A.2d 546 (Law Div. 1975).

9 Garlick v. McFarland, 159 Ohio St. 539, 50 Ohio Op. 445, 113 N.E.2d 92 (1953).
As to the definition of the term "ownership," generally, for purposes of automobile insurance coverage and exclusions, see § 95.

10 Buckeye Union Cas. Co. v. Robertson, 206 Va. 863, 147 S.E.2d 94 (1966).

11 Merchants Indem. Corp. of N. Y. v. Eggleston, 68 N.J. Super. 235, 172 A.2d 206 (App. Div. 1961), judgment aff'd, 37 N.J. 114, 179 A.2d 505 (1962).

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II. Misrepresentations, Warranties, and Conditions by Insured

C. Identification, Registration, and Ownership of Vehicle

§ 73. Misrepresentation pertaining to conditional sale, chattel mortgage, or other security device for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

Automobile liability insurance: sole, unconditional, or absolute ownership clause, 71 A.L.R.2d 267

Automobile property insurance: sole, unconditional, or absolute ownership clause, 71 A.L.R.2d 223

Automobile liability policies conditioned upon the insured's sole ownership of the vehicle may specifically except conditional sales or purchase agreements from the condition.[1] In the absence of such a specific exception, however, the question may arise as to whether a conditional purchaser is covered in view of the fact that the policy contains a sole and unconditional ownership clause. In this regard, there is authority for the view that the purchaser of an automobile under a conditional sales contract by which the title is to remain in the seller until the purchase price is paid does not have the sole and unconditional ownership required by a policy providing fire[2] or liability insurance.[3] Where a conditional buyer was in default at the time the car was involved in a collision, he did not cease to be the sole and unconditional owner, in the absence of the seller's exercise of the options given him in case of default.[4]

The view has been taken in some jurisdictions that a seller who has parted with the possession of a motor vehicle under a conditional sales contract is not the sole and unconditional owner thereof for insurance purposes.[5]

Although there is some authority to the contrary,[6] the interest of the insured in a motor vehicle is not sole and unconditional if it is subject to a chattel mortgage or similar security device.[7]

Footnotes

1 Occidental Fire & Cas. Co. v. Cook, 92 Idaho 7, 435 P.2d 364 (1967).
As to misrepresentations pertaining to sole or unconditional ownership, see §§ 70 to 72.

2 Stallings v. Fidelity-Phenix Fire Ins. Co. of New York, 306 Ill. App. 235, 28 N.E.2d 322 (4th Dist. 1940).

3 Ambrose v. Indemnity Ins. Co. of North America, 124 N.J.L. 438, 12 A.2d 693 (N.J. Ct. Err. & App. 1940).

4 Dunmire Motor Co. v. Oregon Mut. Fire Ins. Co., 166 Or. 690, 114 P.2d 1005 (1941).

5 Votaw v. Farmers Auto. Inter-Insurance Exchange, 15 Cal. 2d 24, 97 P.2d 958, 126 A.L.R. 538 (1940); Borger v. Morrow, 87 S.W.2d 758 (Tex. Civ. App. Amarillo 1935).
As to the status of a conditional seller of personalty as the sole or unconditional owner of such property for purposes of property insurance coverage, generally, see Am. Jur. 2d, Insurance § 1113.

6 Kansas City Fire & Marine Ins. Co. v. Kellum, 221 Ark. 487, 254 S.W.2d 50 (1953).

7 Stamler v. Universal Ins. Co., 305 Mich. 131, 9 N.W.2d 33 (1943).

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II. Misrepresentations, Warranties, and Conditions by Insured

C. Identification, Registration, and Ownership of Vehicle

§ 74. Effect of community property laws pertaining to representations of ownership for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

In a community property state, either spouse can take out a policy of automobile insurance in his or her name alone covering the community property of both without violating an unconditional and sole ownership clause contained in the policy.[1] However, a wife who, following divorce, was awarded an automobile that was community property was not covered by a renewal of the liability policy on that vehicle although the policy was originally issued during the marriage and the renewing agent had knowledge of the divorce and of the car's operation by the wife, where the renewal of the policy was in the husband's name and stated that he was the sole owner of the vehicle, and there was no evidence the agent knew that the car had been awarded to the wife.[2]

Footnotes

1 Insurance Co. of Tex. v. Stratton, 287 S.W.2d 320 (Tex. Civ. App. Waco 1956), writ refused n.r.e.

2 Ohio Cas. Ins. Co. v. Torres, 157 Tex. 189, 300 S.W.2d 947 (1957).

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II. Misrepresentations, Warranties, and Conditions by Insured

D. Identity and Age of Drivers or Persons in Household; Extent of Use of Vehicle

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance
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II. Misrepresentations, Warranties, and Conditions by Insured

D. Identity and Age of Drivers or Persons in Household; Extent of Use of Vehicle

§ 75. Misrepresentation as to drivers and persons in household for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

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Representations as to age or identity of persons who will drive vehicle, or as to extent of their relative use, as avoiding coverage under automobile insurance policy, 29 A.L.R.3d 1139

Trial Strategy

Resident of Household of Named Insured, 13 Am. Jur. Proof of Facts 2d 681

Absent prohibitions in applicable compulsory insurance laws,[1] a misrepresentation as to drivers of automobiles to be insured under an automobile liability insurance policy will generally render the policy void where the misrepresentation is material,[2] regardless of intent,[3] although the failure to list another driver who rarely drives the vehicle on the application does not demand a finding that this failure was a material omission.[4] Where the misrepresentation deprives the insurer of the opportunity to make inquiries and assess whether to assume the risk of issuing the policy to the insured, and knowledge of the fact of additional

household residents of driving age would have influenced the insurer's fixing of the premium rate, an insured's misrepresentation of failing to include persons in the list of all household members of driving age on the application for automobile insurance is material, and thus the policy is void.[5] Moreover, an insured's misrepresentation stating that no other persons reside with him is material, even though none of his family members who do live with the insured are licensed drivers, as information concerning residents in the household is essential information for assessment of risk and premiums charged since other members of a household likely will ride in the vehicle frequently.[6]

There is some authority for the view that a misrepresentation in an insurance application as to the identity or age of drivers who may be expected to drive the insured vehicle will not render a policy void where the application is not incorporated into the policy,[7] or the policy makes no reference to the insured's age,[8] and where the policy does not provide that it will be void or voidable in the event of such misrepresentation.[9]

The ambiguity of a question in an application for automobile insurance regarding drivers of the vehicle may affect whether the answer to such question, omitting certain individuals, is considered a misrepresentation by the applicant.[10] For example, where a question in an application for automobile insurance requests the names of "the only drivers" of the vehicle, such question has been held to be ambiguous, and been construed as a request for the names of regular drivers, rather than occasional drivers.[11] Similarly, where an application requests an applicant to list all "regular or frequent operators" but contains no definition of the phrase, the applicant's daughter, who drove the family car no more than once a month, was not required to be listed on the application under any reasonable definition of the term "regular or frequent operator."[12]

An applicant's failure to answer a question on an automobile insurance application asking the applicant to list "all the children in the household" has been construed as not being a false answer despite the fact that his 38-year-old son lived in the household, since the applicant could have reasonably understood the question as inquiring whether any underage person lived in his household.[13] While in one case insureds under an automobile policy had no duty to report to the insurer the fact that a formerly married daughter became a resident of their household several months after the policy was issued,[14] an insured generated material misrepresentations in another case when she failed to notify the automobile insurer that her teenage son, who resided in her household, had begun operating the insured vehicle, where the application, the policy, and the declarations page each revealed the importance of accurate information, including the names and ages of all eligible drivers, and the insured never contacted the insurer to update the drivers included in the policy and did not disclose her son as a driver on either occasion when she deemed it necessary to alert the insurer that the insured vehicle had changed.[15]

CUMULATIVE SUPPLEMENT

Cases:

Fraud in procuring commercial automobile policy that was issued to shell company for vehicle leased to driver's mother for personal and family use without disclosing driver as regular user did not give insurer an absolute right to rescission as to driver's claim for personal protection insurance (PIP) benefits, but rescission was an equitable remedy, although policy was void ab initio as between insurer and company; rescission did not function by automatic operation of the law. Bazzi v. Sentinel Insurance Company, 502 Mich. 390, 919 N.W.2d 20 (2018).

[END OF SUPPLEMENT]

Footnotes

1 Citizens United Reciprocal Exchange v. Perez, 223 N.J. 143, 121 A.3d 374 (2015); Dairyland Ins. Corp. v. Smith, 646 P.2d 737 (Utah 1982).
As to compulsory insurance statutes and rights of injured third parties, see § 59.

2 Huda v. Integon Nat. Ins. Co., 341 Fed. Appx. 149 (6th Cir. 2009) (applying Michigan law); Willis v. Safeway Ins. Co. of Louisiana, 968 So. 2d 346 (La. Ct. App. 2d Cir. 2007).
The insured obtained a motor vehicle liability policy through what was, at best, a material misrepresentation in an insurance application, thus rendering the policy voidable, where the application required the insured to warrant that she had provided the names of all regular frequent drivers of the covered vehicles, as well as all residents of her household 14 years old or older, but the insured failed to disclose a 15-year-old who resided in her home, and to whom she gifted a car covered by the policy. Jones-Smith v. Safeway Ins. Co., 174 So. 3d 240 (Miss. 2015).
The insured's automobile policy was void due to her warranting that there were no other regular, frequent drivers of her car when, in fact, the insured's boyfriend was a regular, frequent driver of her car. Safeway Ins. Co. v. Dukes, 185 So. 3d 977 (Miss. 2015).

3 Privilege Underwriters Reciprocal Exchange v. Clark, 174 So. 3d 1028 (Fla. 5th DCA 2015), review denied, 2016 WL 743007 (Fla. 2016).
As to intentional misrepresentations and insured's knowledge of falsity of representations, see § 62.

4 Hicks v. American Interstate Ins. Co. of Georgia, 158 Ga. App. 220, 279 S.E.2d 517 (1981); Prescott v. American Heartland Ins. Co., 2016 IL App (1st) 152932-U, 2016 WL 3461023 (Ill. App. Ct. 1st Dist. 2016).

5 Southern Trust Ins. Co. v. Morgan, 57 F. Supp. 3d 882 (E.D. Tenn. 2014); Integon Nat. Ins. Co. v. Villafranco, 228 N.C. App. 390, 745 S.E.2d 922 (2013) (no evidence showing that listing an additional driver on the automobile insurance application would have increased the premiums); Portillo v. Nationwide Mut. Fire Ins. Co., 277 Va. 193, 671 S.E.2d 153 (2009).

6 Rashabov v. Alfuso, 2010 WL 3932899 (N.J. Super. Ct. App. Div. 2010).

7 As to effect of automobile insurance application's attachment to, or incorporation in, policy, see § 60.

8 Allstate Ins. Co. v. Boggs, 27 Ohio St. 2d 216, 56 Ohio Op. 2d 130, 271 N.E.2d 855 (1971).

9 Granite State Fire Ins. Co. v. Roberts, 391 S.W.2d 825 (Tex. Civ. App. Beaumont 1965), writ refused n.r.e., (Oct. 6, 1965).
As to misrepresentation of age avoiding automobile insurance policy, see § 76.

10 Gaskins v. General Ins. Co. of Florida, 397 So. 2d 729 (Fla. 1st DCA 1981); Hicks v. American Interstate Ins. Co. of Georgia, 158 Ga. App. 220, 279 S.E.2d 517 (1981).

11 Remsden v. Dependable Ins. Co., 71 N.J. 587, 367 A.2d 421 (1976).

12 Progressive Specialty Ins. Co. v. Carter, 126 Or. App. 236, 868 P.2d 32 (1994).

13 Middlesex Mut. Assur. Co. v. Walsh, 218 Conn. 681, 590 A.2d 957 (1991).
As to concealment and the insured's failure to disclose information not specifically requested, see § 63.

14 Patrons Mut. Ins. Co. v. Rideout, 411 A.2d 673 (Me. 1980).

15 American Service Ins. Co. v. United Auto. Ins. Co., 409 Ill. App. 3d 27, 349 Ill. Dec. 745, 947 N.E.2d 382 (1st Dist. 2011).

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II. Misrepresentations, Warranties, and Conditions by Insured

D. Identity and Age of Drivers or Persons in Household; Extent of Use of Vehicle

§ 76. Misrepresentation of age of insured driver voiding automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

Representations as to age or identity of persons who will drive vehicle, or as to extent of their relative use, as avoiding coverage under automobile insurance policy, 29 A.L.R.3d 1139

A material misrepresentation as to the age of a driver may justify the avoidance of an automobile insurance policy.[1] A policy of automobile insurance is void where the insurer justifiably relied upon the age information presented by the applicant for insurance and would not have issued the policy had it known the applicant's true age.[2]

Where an insurer would not have issued the policy if it had been aware of the true facts regarding the age of a driver, insurers have been held to be not bound under the insurance contract.[3] However, where a policy would have been issued even if the misrepresentation had not been made, and that the information concerned was sought by the insurer only for the purpose of establishing premium rates, some courts have refused to permit avoidance of the policy on the basis of such misrepresentations.[4] However, the view has also been expressed that a misrepresentation as to the identity or age of drivers of the insured vehicle, sufficient to affect the premium rates on the policy issued, is sufficiently material to the risk to enable the insurer to avoid the policy on the basis of those misrepresentations.[5]

Footnotes

1 Western States Mut. Auto. Ins. Co. v. May, 18 Ill. App. 2d 442, 152 N.E.2d 608 (1st Dist. 1958).

2 State Farm Mut. Auto. Ins. Co. v. Mossey, 195 F.2d 56 (7th Cir. 1952).

3 Inland Mut. Ins. Co. v. Davenport, 247 F. Supp. 387 (D. Md. 1965) (applying Maryland law).

4 Kliebert v. Marquette Cas. Co., 119 So. 2d 545 (La. Ct. App. 1st Cir. 1960); Granite State Fire Ins. Co. v. Roberts, 391 S.W.2d 825 (Tex. Civ. App. Beaumont 1965), writ refused n.r.e., (Oct. 6, 1965).

5 Stockinger v. Central Nat. Ins. Co., 24 Wis. 2d 245, 128 N.W.2d 433 (1964).

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II. Misrepresentations, Warranties, and Conditions by Insured

D. Identity and Age of Drivers or Persons in Household; Extent of Use of Vehicle

§ 77. Misrepresentation of drivers under age 25 voiding automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

Forms

Forms relating to age of driver, generally, see Am. Jur. Pleading and Practice Forms, Automobile Insurance [Westlaw®(r) Search Query]

A representation by an insured in obtaining automobile insurance that there are no male drivers under 25 years of age has sometimes been treated by the courts as one relating only to the premium to be charged for the insurance, and not as one material to the assumption of risk by the insurer, or as one increasing the risk, so as to result in the voiding of the policy in question.[1] This is particularly true where the information elicited is for rate classification purposes.[2] That a representation that there would be no male drivers under 25 years of age driving the automobile would not act to render the policy null and void where the vehicle was involved in an accident while being driven by a male driver under that age, on the ground that such language, reasonably construed, means that there are no male drivers under 25 years of age who drive the vehicle more than incidentally or on isolated occasions, and that such a representation could not reasonably be construed to mean that no male driver under that age would ever, even in isolated instances, drive the vehicle during the term of the insurance policy.[3] On the other hand, there is authority to the effect that a representation made in connection with an automobile insurance policy that there are no operators of the insured vehicle under 25 years of age, if untrue, is such a material misrepresentation as will avoid the policy,[4] as, for example, where it is clear that the insurer would not have issued the policy had it known that the representation was false.[5]

Where a vehicle is involved in an accident while being driven by a person under 25 years of age, the insurer cannot avoid its obligations under the policy applicable to that vehicle on the basis of a representation that there was no operator of a vehicle under 25 years of age residing in the named insured's household, where such statement was true at the time it was made and where the terms of the policy are not contingent upon the continuing truthfulness of the statement.[6] However, if a representation states not only that there is no person under 25 years of age in the household, but that no member of the household will reach legal driving age during the time of the policy, it is a misrepresentation if a minor household member will reach that age during the policy term, so that the policy may be avoided if the issuance of the policy was dependent upon the accuracy of that representation.[7]

An automobile insurer is not entitled to rescind an automobile insurance policy based on the failure of the applicant to list her 14-year-old daughter in the "driver exclusions" section of the application, which required the exclusion of "all household members under age 25," where another portion of the application requested information concerning "any other regular or frequent operators" of the vehicle to be insured, as to which the applicant's daughter was not required to be listed, and the insurer's own agent testified that if a household member was not a "regular or frequent operator," that person was not required to be listed under the exclusion section.[8] Applicants are not required to second-guess what insurers might want to know beyond what is required to be disclosed in an application.[9]

Footnotes

1 Buffington v. New Hampshire Fire Ins. Co., 104 Ga. App. 139, 121 S.E.2d 270 (1961).

2 Varble v. Stanley, 306 S.W.2d 662 (Mo. Ct. App. 1957); State Farm Mut. Auto. Ins. Co. v. Shaffer, 250 N.C. 45, 108 S.E.2d 49 (1959).

3 Buffington v. New Hampshire Fire Ins. Co., 104 Ga. App. 139, 121 S.E.2d 270 (1961).

4 Highway Ins. Co. v. Peterson, 186 So. 2d 48 (Fla. 1st DCA 1966); Safeway Ins. Co. v. Duran, 74 Ill. App. 3d 846, 30 Ill. Dec. 652, 393 N.E.2d 688 (1st Dist. 1979).
On her renewal application for a personal umbrella insurance policy, the insured misrepresented the fact that her minor son had a learner's permit when she responded no to the question asking if there were any drivers in the household under the age of 22, and which specifically instructed the insured to include drivers with a learner's permit, such that the insurer could void the policy if the misrepresentation was material. RLI Ins. Co. v. Santos, 746 F. Supp. 2d 255 (D. Mass. 2010).

5 Ratliff v. Safeway Ins. Co., 257 Ill. App. 3d 281, 195 Ill. Dec. 473, 628 N.E.2d 937 (1st Dist. 1993).

6 Fazzino v. Insurance Co. of North America, 152 Cal. App. 2d 304, 313 P.2d 178 (1st Dist. 1957).

7 Stockinger v. Central Nat. Ins. Co., 24 Wis. 2d 245, 128 N.W.2d 433 (1964).

8 Progressive Specialty Ins. Co. v. Carter, 126 Or. App. 236, 868 P.2d 32 (1994).

9 Progressive Specialty Ins. Co. v. Carter, 126 Or. App. 236, 868 P.2d 32 (1994).

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II. Misrepresentations, Warranties, and Conditions by Insured

D. Identity and Age of Drivers or Persons in Household; Extent of Use of Vehicle

§ 78. Misrepresentation of percentage of use of insured vehicle by particular persons voiding automobile insurance policy

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

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Representations as to age or identity of persons who will drive vehicle, or as to extent of their relative use, as avoiding coverage under automobile insurance policy, 29 A.L.R.3d 1139

Where an insured has disclosed the presence and age of another driver of the insured vehicle, but the insurer alleges that the stated percentage of time which the insured vehicle would be driven by such person was incorrect, such misrepresentation has generally been regarded by the courts to be a statement relating to present circumstances only, or a mere estimate as to future activity.[1] Under the circumstances of the cases in which such assertion has been made by insurers, such a misstatement has generally not been construed as voiding the applicable automobile insurance policy.[2] In this regard, a representation regarding the percentage of use of an insured vehicle will not operate to absolve the insurer of liability to a third person for injuries caused through the use of the insured vehicle.[3]

On the other hand, it is often a question of fact for the jury to determine whether a statement as to percentage of driving time, if untrue, was made with an intent to deceive or defraud an insurer, and whether it increased the risk of loss.[4] Also, where an insured, in applying for automobile liability insurance listed herself as the person who would drive the automobile 100% of

the time, but the evidence established that when she applied for the insurance she intended that her husband would continue to use the automobile to drive to and from work 75 or 80% of the time, and that the husband had no operator's license and had but one eye, and the uncontroverted testimony on behalf of the insurer was that coverage would not have been written for a man with impaired vision even for an additional premium regardless of whether or not he had a valid driver's license, the misrepresentation was material and the policy was void.[5]

A motor vehicle policy issued to the owner of a tour bus did not cover a tour bus or accident in which a passenger suffered fatal injuries, where the tour bus owner failed to disclose in its application for insurance that it loaned its buses to uninsured corporations for transport of tourists, and the accident occurred while the uninsured corporation was borrowing the bus; the undisclosed types of business were material and unacceptable underwriting risks.[6]

Footnotes

1 State Farm Mut. Auto. Ins. Co. v. Reese, 116 Ga. App. 59, 156 S.E.2d 529 (1967) (applying North Dakota law).

2 Milbank Mut. Ins. Co. v. Wentz, 352 F.2d 592 (8th Cir. 1965); Maryland Cas. Co. v. Gordon, 52 Tenn. App. 1, 371 S.W.2d 460 (1963).

3 Zepczyk v. Nelson, 35 Wis. 2d 140, 150 N.W.2d 413 (1967).

4 Nielsen v. Mutual Service Cas. Ins. Co., 243 Minn. 246, 67 N.W.2d 457 (1954).
As to intentional misrepresentations and insured's knowledge of falsity of representations, see § 62.

5 Semelsberger v. Hatem, 267 Md. 43, 296 A.2d 398 (1972).

6 Rappaport v. Progressive Exp. Ins. Co., 972 So. 2d 970 (Fla. 3d DCA 2007).

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II. Misrepresentations, Warranties, and Conditions by Insured

E. Operators' Driving Records; Drivers' Education Courses Taken

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance
A.L.R. Index, Automobile Collision Insurance
A.L.R. Index, Automobile Insurance
West's A.L.R. Digest, Insurance 3006, 3017, 3066

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II. Misrepresentations, Warranties, and Conditions by Insured

E. Operators' Driving Records; Drivers' Education Courses Taken

§ 79. Misrepresentation of driving record for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

Materiality of false statements by applicant for automobile insurance as to license revocations or suspensions or traffic violations, 89 A.L.R.2d 1027

Where an applicant for automobile liability insurance misrepresents his or her driving record,[1] that misrepresentation is material to the risk which the insurer is willing to assume for a stated premium.[2] Whether the insurer could have issued the policy for a different consideration, that is, a surcharged premium, is immaterial.[3] It is not necessary that a traffic violation conviction, which an applicant conceals from an insurer, result in suspension or revocation of the applicant's operator's license in order for such a concealment to comprise a material misrepresentation; it is merely necessary that such conviction would materially increase the risk assumed by the insurer in issuing an insurance policy.[4]

However, the mere fact of a misrepresentation of prior traffic violations will ordinarily not support a finding that the policy may be avoided by the insurer.[5] The necessary materiality of misrepresentations as to prior traffic violations may be demonstrated upon a showing that the insurer, in the absence of such misrepresentations, would not have issued the insurance.[6] Whether or not a given misrepresentation as to traffic violation convictions materially increases the insurer's risk, so as to permit the insurer to avoid the policy, is a ordinarily a question of fact for the jury.[7]

The failure to disclose an isolated traffic violation generally is not regarded to be a material misrepresentation giving rise to a right in the insurer to avoid the policy,[8] although it has, upon occasion, been found that concealment of even a single violation would void the contract, if the insurer would have declined the risk had it known the truth,[9] as, for example, where knowledge of the citation in question would have made the applicant ineligible for insurance under the insurer's guidelines,[10] particularly where the violation was a serious one, such as a conviction for driving while intoxicated.[11] Where a misrepresentation as to a single violation is deemed material, justifying avoidance of the policy, this result is not altered by the fact that the misrepresentation may have been innocently made.[12]

Where multiple traffic violations have not been disclosed on automobile insurance applications, the courts have more frequently found cause for voiding the policy, especially where some of the offenses are of a serious nature.[13] Also, in some instances, evidence of a material misrepresentation on an application for insurance may be based on a combination of traffic violations and chargeable accidents in a specified time period prior to the application.[14]

Observation:

There is authority for the view that an applicant for automobile insurance is under no affirmative duty to disclose the existence of his or her convictions for driving under the influence of alcohol.[15]

An applicant's failure to disclose prior traffic violations to a second agent of the same insurer, after switching agents, when completing an application for the second agent, may constitute a material misrepresentation entitling the insurer to cancel the policy, despite any claim of the insured that the first agent had checked the insured's driving record, was aware of recorded violations, and could have provided such information to the second agent.[16]

Some courts have concluded that an insured's fraudulent misrepresentation of his or her driving record entitles the insurer to rescind an automobile insurance policy ab initio, even though third parties were injured in the accident with the insured's vehicle, under circumstances where the injured parties had already received uninsured motorist benefits for their injuries, so that the policy of the state financial responsibility act to compensate accident victims was thus upheld, and the real dispute was between insurance companies in a subrogation suit.[17]

Footnotes

1 Voss v. American Mut. Liability Ins. Co., 341 S.W.2d 270 (Mo. Ct. App. 1960).

2 Erie Ins. Co. v. Insurance Com'r of State of Md., 84 Md. App. 317, 579 A.2d 771 (1990).

3 Erie Ins. Co. v. Insurance Com'r of State of Md., 84 Md. App. 317, 579 A.2d 771 (1990).

4 Safeco Ins. Co. of America v. Gonacha, 142 Colo. 170, 350 P.2d 189 (1960).
As to misrepresentations of prior suspensions or revocations of driver's licenses, see § 80.

5 MFA Mut. Ins. Co. v. Lusby, 295 F. Supp. 660 (W.D. Va. 1969).

6 Klopp v. Keystone Ins. Companies, 528 Pa. 1, 595 A.2d 1 (1991).

7 Mayflower Ins. Exchange v. Gilmont, 280 F.2d 13, 89 A.L.R.2d 1019 (9th Cir. 1960) (applying Oregon law).

8 American Fire & Indem. Co. v. Lancaster, 286 F. Supp. 1011 (E.D. Mo. 1968), judgment aff'd, 415 F.2d 1145 (8th Cir. 1969).

9 Miller v. Plains Ins. Co., 409 S.W.2d 770 (Mo. Ct. App. 1966).
Where an applicant's statement that he had not been charged with speeding in the past year in a motor vehicle application was a representation, rather than a warranty, it could invalidate the policy only if it was material and not substantially true. Sanford v. Federated Guar. Ins. Co., 522 So. 2d 214 (Miss. 1988).

10 Lash v. Allstate Ins. Co., 210 Mich. App. 98, 532 N.W.2d 869 (1995).

11 Nationwide Mut. Ins. Co. v. Conley, 156 W. Va. 391, 194 S.E.2d 170 (1972).

12 Lash v. Allstate Ins. Co., 210 Mich. App. 98, 532 N.W.2d 869 (1995).
As to intent and insured's knowledge of falsity of representations, see § 62.

13 Cannon v. Travelers Indem. Co., 314 F.2d 657 (8th Cir. 1963) (applying Missouri law); Ferrell v. Columbia Mut. Cas. Ins. Co., 306 Ark. 533, 816 S.W.2d 593 (1991).

14 Seaton v. National Grange Mut. Ins. Co., 732 S.W.2d 288 (Tenn. Ct. App. 1987).
As to unreported accident or loss on automobile insurance application, see § 81.

15 Allstate Ins. Co., Inc. v. Shirah, 466 So. 2d 940 (Ala. 1985).

16 Erie Ins. Exchange v. Pennsylvania Ins. Dept., 666 A.2d 788 (Pa. Commw. Ct. 1995).

17 Motorists Mut. Ins. Co. v. Morris, 654 N.E.2d 861 (Ind. Ct. App. 1995).

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II. Misrepresentations, Warranties, and Conditions by Insured

E. Operators' Driving Records; Drivers' Education Courses Taken

§ 80. Misrepresentation of suspension or revocation of driver's license for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

Materiality of false statements by applicant for automobile insurance as to license revocations or suspensions or traffic violations, 89 A.L.R.2d 1027

Forms

Forms relating to license of driver, generally, see Am. Jur. Pleading and Practice Forms, Automobile Insurance [Westlaw®(r) Search Query]

While suspension of a driver's license is a matter that must be reported in response to a question on an insurance application seeking such information,[1] the mere fact of a suspension or revocation of a driver's license is not necessarily material to an insurer's decision as to whether to issue an insurance policy, and, therefore, a misrepresentation as to such a suspension or

revocation is not, in itself, grounds for the insurer's avoidance of a policy.[2] Thus, where an applicant stated in good faith that he was a licensed driver, while in fact his license had been revoked, unknown to the applicant, for failure to respond to a summons issued for a traffic violation, such misrepresentation was insufficient to void the policy.[3] Similarly, there was no material misrepresentation involved where the applicant incorrectly stated that his license had not been suspended, revoked, or refused during the past two years, although, in fact, his license had been revoked for two months because he was an incompetent driver, but where such incompetence resulted from his being an inmate of a state hospital as a mental patient, and there was no showing of mental illness or any reason for the applicant being such a patient.[4]

However, a suspension or revocation of a driver's license because of a conviction for drunken driving[5] might reasonably cause an insurer not to issue insurance covering the person whose license had been suspended or revoked, and concealment of such suspension or revocation is a material misrepresentation rendering the contract void or voidable,[6] particularly where there has been more than one revocation or suspension for that reason,[7] at least in the absence of compulsory insurance laws abrogating the common-law right of rescission.[8] Information that the driver's license of a driver recently added to a policy has recently been suspended because of a driving under the influence violation is "information necessary for the acceptance or proper rating of the risk."[9] Similarly, misrepresentations as to past suspensions or revocations of drivers licenses are considered material where the applicant fails to disclose such suspensions or revocations based upon reckless driving[10] or speeding.[11] Furthermore, an insurance policy is voidable where the insured fails to reveal, in response to a question as to whether his driver's license has ever been suspended or revoked, that his license had been revoked because of a hit-and-run accident and accumulated traffic tickets.[12]

Observation:

Statutes have sometimes specifically provided that motor vehicle policies may not provide coverage for an insured during the period his license is suspended or revoked.[13]

Under the general rule applicable in some jurisdictions that a misrepresentation must be knowingly false,[14] a negative response to a question on an automobile liability insurance application as to whether any operator in the applicant's household had his or her license revoked or suspended during the past five years did not constitute a misrepresentation where there was no indication in the record that the applicant knew or had reason to know that his son had had a license during the five-year period preceding the application, much less that his license had been suspended during that period.[15] Similarly, where the insured stated that he was a licensed driver but, unknown to him, his license had been revoked for failure to respond to a summons issued for an alleged traffic violation, such misrepresentation was insufficient to void the policy.[16] An insured's omission of material facts about the status of his driver's license was not a misrepresentation and did not render a commercial automobile insurance policy void ab initio, where the application asked for the name, address, age, and driver's license number, but failed to ask if the license was valid or validly obtained, whether the insured had ever been licensed under another name, or whether the license had ever been suspended or revoked.[17] A false statement that the applicant's operator's license had never been suspended did not void an insurance contract where the plaintiff signed but did not read the application, which had been prepared by the insurer's agent, and where the insurer did not allege intent to deceive or that the misrepresentation was material to the acceptance of the risk.[18] Moreover, misrepresentations made by an insured's spouse in applying for automobile insurance for the insured as to the

whether the insured's license had been suspended, revoked, or restricted within a prior specified time period, are not sufficient to justify denial of coverage of the insured under the policy, where the insured, himself, made no misrepresentations.[19]

An applicant's fraudulent misrepresentation of his driving record, including the failure to indicate that his license had been suspended on at least three separate occasions, entitled the insurer to rescind the automobile insurance policy ab initio, even though third parties were injured in the accident with the applicant's vehicle, on the basis that the injured parties had already received uninsured motorist benefits for their injuries, so that the policy of the State Financial Responsibility Act to compensate accident victims was upheld, and that the real dispute was between the insurance companies in a subrogation suit.[20]

Footnotes

1 McLeod v. United Presidential Life Ins. Co., 136 F. Supp. 2d 1313 (N.D. Ga. 2000), aff'd, 251 F.3d 163 (11th Cir. 2001).

2 Nielsen v. Mutual Service Cas. Ins. Co., 243 Minn. 246, 67 N.W.2d 457 (1954).

3 Williams v. American Home Assur. Co., 121 N.J. Super. 351, 297 A.2d 193 (App. Div. 1972).

4 Allstate Ins. Co. v. Stinger, 400 Pa. 533, 163 A.2d 74 (1960).

5 As to misrepresentation of driving record for automobile insurance, see § 79.

6 Lovett v. Webb, 183 So. 2d 97 (La. Ct. App. 1st Cir. 1965).
As to concealment and the insured's failure to disclose information not specifically requested, see § 63.

7 Adriaenssens v. Allstate Ins. Co., 258 F.2d 888 (10th Cir. 1958) (applying Oklahoma law).

8 As to compulsory insurance statutes and rights of injured third parties, see § 59.

9 Ramsdell v. State Auto Mut. Ins. Co., 206 Ga. App. 357, 425 S.E.2d 661 (1992).
As to basis for termination of automobile insurance policies, see § 51.

10 Modisette v. Foundation Reserve Ins. Co., 1967-NMSC-094, 77 N.M. 661, 427 P.2d 21 (1967).

11 State Farm Mut. Auto. Ins. Co. v. Butler, 203 Va. 575, 125 S.E.2d 823 (1962).

12 State Farm Mut. Auto. Ins. Co. v. West, 149 F. Supp. 289 (D. Md. 1957).

13 Johnson v. Cumis Ins. Soc., Inc., 624 F. Supp. 1170 (D.D.C. 1986).

14 As to intent and insured's knowledge of falsity of representations, see § 62.

15 Middlesex Mut. Assur. Co. v. Walsh, 218 Conn. 681, 590 A.2d 957 (1991).

16 Williams v. American Home Assur. Co., 121 N.J. Super. 351, 297 A.2d 193 (App. Div. 1972).

17 Progressive Cas. Ins. Co. v. Hanna, 316 N.J. Super. 63, 719 A.2d 683 (App. Div. 1998).

18 Crest v. State Farm Mut. Auto. Ins. Co., 20 Ill. App. 3d 382, 313 N.E.2d 679 (2d Dist. 1974).

19 Darnell v. Auto-Owners Ins. Co., 142 Mich. App. 1, 369 N.W.2d 243 (1985).

20 Motorists Mut. Ins. Co. v. Morris, 654 N.E.2d 861 (Ind. Ct. App. 1995).

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7 Am. Jur. 2d Automobile Insurance § 81

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II. Misrepresentations, Warranties, and Conditions by Insured

E. Operators' Driving Records; Drivers' Education Courses Taken

§ 81. Unreported accident or loss on automobile insurance application

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

There is a distinction between a material misrepresentation by an insured regarding a loss that already has occurred in order to purchase insurance coverage for that loss, and a material misrepresentation regarding some other fact that might have led the insurer not to issue a policy if it had been known.[1] In this regard, for example, where there was no coverage at the time a third party was injured, and the applicant's subsequent fraudulent acts in fraudulently answering in the negative questions relative to previous accidents, even though the vehicle to be insured had been involved in an accident earlier that day, resulted in a policy being issued which listed the effective time as 12:01 a.m. of the day the binder was executed, thereby ostensibly covering the accident in question, the rule prohibiting an insurance company from taking away coverage which existed when the injury occurred and the reasons for the rule did not apply; the vehicle was not registered or being operated at the time of the injury as a result of or in reliance on the insurer having insured the vehicle.[2]

The failure to mention a prior accident at the time of applying for automobile insurance may justify the subsequent voiding of the policy issued,[3] especially where the misrepresentation is made by the insured with an intent to deceive the insurer.[4] Furthermore, evidence of a material misrepresentation on an application for insurance may, in some instances, be based on a combination of traffic violations and chargeable accidents in a specified time period prior to the application.[5]

It is not a material misrepresentation for an applicant for insurance on a commercial vehicle who had made a theft loss claim on a personal car titled in his wife's name several months earlier to indicate that he had experienced no physical damage or loss (including theft) in the past three years where the application form refers to insurance for a commercial vehicle and makes no reference to other vehicles owned or insured by the applicant or owner of the business for his or his family's personal use.[6] Furthermore, even if the application could be considered ambiguous with regard to the type of loss disclosure required, the

insured is entitled to interpret the question as referring to a commercial loss in his trucking business, and the prior theft loss was not one suffered by the applicant himself, but by his wife as title holder of the stolen car.[7]

Footnotes

1 Auto-Owners Ins. Co. v. Johnson, 209 Mich. App. 61, 530 N.W.2d 485 (1995).
The automobile insurer's risk of loss was increased by the insured's misrepresentation on the application that a grandson did not reside with her, where the grandson had been involved in previous vehicle accidents resulting in property damage, criminal convictions, and a restricted license, and had the insured included the grandson as a resident in her household those facts would have come to the insurer's attention in determining whether to issue the policy, and based on those facts the insurer would not have issued the policy. Southern Trust Ins. Co. v. Morgan, 57 F. Supp. 3d 882 (E.D. Tenn. 2014).

2 Slaby v. Cox, 250 Kan. 429, 827 P.2d 18 (1992).
Where the insured had been involved in an automobile accident in which his vehicle struck another vehicle killing the occupants of the second vehicle and, later that day, the insured had gone to an insurance agency to apply for coverage, obtaining a policy which was effective as of 12:01 that day, covering the accident, there was no reason in law or in the policy for the insurer to be the source of recovery in the case, where its policy came into effect after the accident had already occurred. Auto-Owners Ins. Co. v. Johnson, 209 Mich. App. 61, 530 N.W.2d 485 (1995).

3 T.J. Blake Trucking, Inc. v. Alea London, Ltd., 284 Ga. App. 384, 643 S.E.2d 762 (2007); Brown v. Community Moving & Storage, Inc., 186 W. Va. 691, 414 S.E.2d 452 (1992).

4 Schexnaider v. Rome, 485 So. 2d 245 (La. Ct. App. 3d Cir. 1986).
As to intent and insured's knowledge of falsity of representations, see § 62.

5 As to misrepresentation of driving record for automobile insurance, see § 79.

6 Empire Fire and Marine Ins. Co. v. Jackson, 159 Ga. App. 585, 284 S.E.2d 99 (1981).

7 Empire Fire and Marine Ins. Co. v. Jackson, 159 Ga. App. 585, 284 S.E.2d 99 (1981).

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7 Am. Jur. 2d Automobile Insurance II F Refs.

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II. Misrepresentations, Warranties, and Conditions by Insured

F. Prior Refusal or Cancellation of Insurance

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3024, 3066

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance
A.L.R. Index, Automobile Collision Insurance
A.L.R. Index, Automobile Insurance
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II. Misrepresentations, Warranties, and Conditions by Insured

F. Prior Refusal or Cancellation of Insurance

§ 82. Misrepresentation regarding prior refusal, rejection, or cancellation of automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3024, 3066

A.L.R. Library

Modern status of rules regarding materiality and effect of false statement by insurance applicant as to previous insurance cancellations or rejections, 66 A.L.R.3d 749

Forms

Forms relating to misrepresentation, generally, see Am. Jur. Pleading and Practice Forms, Automobile Insurance [Westlaw®(r) Search Query]

Generally, an applicant for automobile insurance who falsely represents that an insurance company had refused or refused to renew,[1] or canceled[2] his or her automobile insurance makes a material misrepresentation, which will render a resulting policy

void ab initio or voidable at the option of the insurer,[3] at least absent compulsory insurance laws abrogating the common-law right of rescission under the circumstances involved.[4]

Observation:

A letter from the insurer informing the insured that the company would be unable to issue a renewal contract was a "refusal" of insurance, making a statement by the insured in an application for a policy with another insurer that he had never been refused a policy a misrepresentation.[5] However, an applicant for automobile insurance generally must have actually received notice of a cancellation in order for his negative answer to the question whether he has ever had his insurance canceled to constitute a misrepresentation.[6]

Although there is limited authority that the materiality of a misrepresentation as to prior insurance cancellations is a matter of fact, to be determined by the trier of fact,[7] most courts have recognized, either expressly or by clear implication, and without apparent qualification, that an automobile insurance applicant's false denial of prior cancellations or refusals of coverage is material as a matter of law.[8]

Courts generally have not looked beyond the falsity of the denial and inquired whether the reason for the undisclosed cancellation or refusal is itself relevant to the risk being assumed.[9] The materiality of an automobile policy applicant's omitted statements concerning the cancellation of his or her automobile insurance policy is improperly determined by whether the misrepresentations relate to the cause of the loss from an accident by a named insured; rather, the court should determine whether the facts, if truly stated, would have influenced a reasonable insurer in accepting the risk, fixing the premium, fixing the amount of coverage, or providing coverage with respect to the hazard resulting in the loss.[10] Thus, where an applicant for collision insurance on a tractor-trailer denied previous cancellations of similar insurance, the fact that another company had previously canceled an automobile insurance policy issued to the applicant afforded the insurer grounds for avoiding the policy, and the reason for the cancellation of the earlier policy was entirely irrelevant to the issue of whether the instant policy declaration was material.[11]

Footnotes

1 Government Emp. Ins. Co. v. Dennis, 65 Ill. App. 2d 365, 212 N.E.2d 759 (2d Dist. 1965).

2 Minich v. M. F. A. Mut. Ins. Co., 325 S.W.2d 56 (Mo. Ct. App. 1959).

3 Government Emp. Ins. Co. v. Dennis, 65 Ill. App. 2d 365, 212 N.E.2d 759 (2d Dist. 1965); Strong v. State Farm Mut. Ins. Co., 76 S.D. 367, 78 N.W.2d 828 (1956).

4 As to compulsory insurance statutes and rights of injured third parties, see § 59.

5 Loving v. Allstate Ins. Co., 17 Ill. App. 2d 230, 149 N.E.2d 641 (1st Dist. 1958).

6 State Farm Mut. Auto. Ins. Co. v. Martin, 382 S.W.2d 83 (Ky. 1964).

7 Pruitt v. Allstate Ins. Co., 92 Ill. App. 2d 236, 234 N.E.2d 576 (2d Dist. 1968); Phoenix Assur. Co. of New York v. General Motors Acceptance Corp., 369 S.W.2d 528 (Tex. Civ. App. Waco 1963), writ refused n.r.e., (Oct. 16, 1963).

As to materiality of misrepresentations, generally, see § 61.

8 Farmers Auto. Ins. Ass'n v. Pursley, 130 Ill. App. 2d 980, 267 N.E.2d 734 (5th Dist. 1971).

9 Hawkeye-Security Ins. Co. v. Government Emp. Ins. Co., 207 Va. 944, 154 S.E.2d 173 (1967).

10 York Mut. Ins. Co. v. Bowman, 2000 ME 27, 746 A.2d 906 (Me. 2000).

11 Cass Bank & Trust Co. v. National Indem. Co., 326 F.2d 308 (8th Cir. 1964) (applying Missouri law).

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7 Am. Jur. 2d Automobile Insurance II G Refs.

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II. Misrepresentations, Warranties, and Conditions by Insured

G. Physical Defects or Conditions

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance
A.L.R. Index, Automobile Collision Insurance
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II. Misrepresentations, Warranties, and Conditions by Insured

G. Physical Defects or Conditions

§ 83. Misrepresentation regarding physical defects or condition for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

Automobile insurance: concealment or nondisclosure of physical defects or conditions as avoiding coverage, 72 A.L.R.3d 804

Forms

Forms relating to misrepresentation, generally, see Am. Jur. Pleading and Practice Forms, Automobile Insurance [Westlaw®(r) Search Query]

Absent compulsory insurance laws abrogating the common-law right of rescission under the circumstances involved,[1] a misrepresentation in an application for automobile insurance as to the insured's possessing a physical defect or condition warrants the applicable policy's rescission, or the declaration that it is void ab initio, where such misrepresentation is a material one.[2] For example, an automobile insurance policy was rendered void by a driver's material misrepresentation on his application

regarding his lifelong epilepsy, where the driver had indicated on his application that he had no physical or mental impairments.[3] Where fair-minded men could reasonably differ as to whether the ordinary concept of "physical defect" includes a particular ailment, the question as to whether that ailment is such a defect, and, thus, whether an answer to a question on an automobile insurance application as to the applicant's possessing such physical defects is a misrepresentation, is properly left for the jury to resolve.[4]

Footnotes

1 § 59.

2 Minich v. M. F. A. Mut. Ins. Co., 325 S.W.2d 56 (Mo. Ct. App. 1959); Erie Ins. Co. v. Foster, 126 Pa. Commw. 600, 560 A.2d 856 (1989); Utica Mut. Ins. Co. v. National Indem. Co., 210 Va. 769, 173 S.E.2d 855 (1970).
As to nature of inquiry by the insurer, see § 84.

3 Consumer First Ins. Co. v. Lee, 2009 WL 425948 (N.J. Super. Ct. App. Div. 2009).

4 Jones v. State Farm Mut. Auto. Ins. Co., 402 F.2d 65 (5th Cir. 1968); Chapman v. Safeco Ins. Co. of America, 722 F. Supp. 285 (N.D. Miss. 1989).

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7 Am. Jur. 2d Automobile Insurance § 84

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II. Misrepresentations, Warranties, and Conditions by Insured

G. Physical Defects or Conditions

§ 84. Nature of inquiry by insurer regarding physical defects or condition for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

Automobile insurance: concealment or nondisclosure of physical defects or conditions as avoiding coverage, 72 A.L.R.3d 804

The courts have sometimes recognized that the failure of an automobile insurance applicant to disclose on an automobile insurance application any physical defect or condition which is material to the risk does not constitute a misrepresentation entitling the insurer to avoid the coverage unless the application is reasonably designed to elicit information regarding the defect or condition,[1] although some courts follow the rule that any material misrepresentation in an application for automobile insurance will void the policy.[2]

Where automobile insurance forms have asked in a general manner whether the insured has any physical defects, impairments, or disabilities, without giving specific examples of defects, impairments, or disabilities of the type to which reference is made, the failure of an epileptic to reveal his or her affliction in response to such a question has been considered a misrepresentation entitling the insurer to avoid coverage on an automobile policy issued pursuant to, or in reliance upon, the application.[3] A deaf insured's answer of "no" to a question on the automobile policy renewal form, which asked whether the insured had a physical or mental impairment or disability, constituted a misrepresentation which allowed the insurer to decline to renew the automobile

policy, as the insured's hearing impairment was a condition material to the risk, and the misrepresentation was made knowingly and in bad faith.[4] Similarly, an insured's automobile liability policy has been deemed to be void ab initio where, among other things, the insured, who was blind in one eye, nevertheless gave a negative answer to a question in the application for the insurance asking in a general manner whether he had any physical defect.[5]

An automobile insurance policy was considered to be void from its inception where an epileptic insured gave a negative answer to a question asking whether he had any chronic ailments, and listing epilepsy as a specific example of one such ailment.[6] However, where an insured, whose wife was epileptic, gave a negative answer to an application question asking whether the insured or any operator of the automobile was physically or mentally impaired and giving as examples a list of several specific impairments which did not include epilepsy, the answer did not constitute a misrepresentation which avoided a policy issued in reliance upon the application, since the insured, answering the question by reference to the specific examples, could reasonably have concluded that epilepsy was not the type of impairment being inquired about.[7]

Observation:

An applicant for automobile insurance did not engage in a material misrepresentation by giving a "no" answer to a question as to whether applicants had any "physical impairment" where her husband had undergone a bilateral frontal lobotomy 30 years earlier to correct a personality disorder, and the agent had told the applicant that the question required that she reveal only those physical conditions which would affect one's ability to drive.[8]

Footnotes

1 Government Emp. Ins. Co. v. Cain, 226 F. Supp. 589 (D. Md. 1964).

2 As to materiality of misrepresentations, generally, see § 61.
As to misrepresentation regarding physical defects or condition for automobile insurance, see § 83.

3 Jones v. State Farm Mut. Auto. Ins. Co., 402 F.2d 65 (5th Cir. 1968); Consumer First Ins. Co. v. Lee, 2009 WL 425948 (N.J. Super. Ct. App. Div. 2009).

4 Erie Ins. Co. v. Foster, 126 Pa. Commw. 600, 560 A.2d 856 (1989).

5 Minich v. M. F. A. Mut. Ins. Co., 325 S.W.2d 56 (Mo. Ct. App. 1959).

6 Civil Service Emp. Ins. Co. v. Blake, 245 Cal. App. 2d 196, 53 Cal. Rptr. 701 (2d Dist. 1966).

7 Government Emp. Ins. Co. v. Cain, 226 F. Supp. 589 (D. Md. 1964).

8 Chapman v. Safeco Ins. Co. of America, 722 F. Supp. 285 (N.D. Miss. 1989).

7 Am. Jur. 2d Automobile Insurance II H Refs.

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II. Misrepresentations, Warranties, and Conditions by Insured

H. Place or Manner of Keeping Vehicle

Topic Summary | Correlation Table

Research References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A.L.R. Library

A.L.R. Index, Assigned Risk Automobile Insurance
A.L.R. Index, Automobile Collision Insurance
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II. Misrepresentations, Warranties, and Conditions by Insured

H. Place or Manner of Keeping Vehicle

§ 85. Misrepresentation regarding place of keeping or where vehicle is "principally garaged" for automobile insurance

Topic Summary | Correlation Table | References

West's Key Number Digest

West's Key Number Digest, Insurance 3006, 3017, 3066

A misrepresentation as to where an automobile will be kept generally will not warrant rescission of an automobile insurance policy absent proof by the insurer that the misrepresentation increased the insurer's risk of loss.[1] In this regard, a misrepresentation on a renewal application as to where the insured vehicle is to be "principally garaged" is material where the evidence establishes that the misrepresentation as to the location of the automobile influenced the calculation of the rate of the insurance premium based upon an increased risk of loss to the insurer, such that, if the insurer were aware that the vehicle was principally garaged elsewhere than specified in the policy, the premium would have increased.[2]

Observation:

By listing a Connecticut address as her place of residence and location where the insured vehicle would be garaged, the insured, who actually lived in New York, intentionally misrepresented her address in order to obtain insurance at reduced premiums, precluding recovery of benefits, as the misrepresentation was material, since the defendant would not have issued the policy under the same terms had it known that the insured resided in New York.[3]

The fact that the insured vehicle is moved to a location other than the one designated in the policy will not void the policy where the car is kept at the new location for only a short time so that it cannot be said, as a matter of law, that the vehicle has become "principally garaged" at the new location.[4] Similarly, the temporary storage of an automobile for the purpose of selling that vehicle does not violate a dealer's insurance policy requiring the dealer to report any change of storage location.[5]

An automobile liability policy does not require notice of change of address of the named insured absent a provision forbidding the insured from moving the automobile to another location or an express provision as to notice of change, notwithstanding that the policy states the place where the automobile is to be principally garaged, and that the policy requires notification as to additional automobiles.[6] However, an insured's failure to inform the automobile insurer of her move from Indiana to Michigan prior to renewal of her policy constituted a material misrepresentation, resulting in no coverage for the insured under the renewal policy for her vicarious liability for her husband's negligence as a permissive user, as the insured's move to Michigan directly affected the risk accepted by the insurer as well as the loss incurred.[7]

Footnotes

1 Preferred Risk Mut. Ins. Co. v. Anderson, 277 Minn. 342, 152 N.W.2d 476 (1967).

2 Arbella Mut. Ins. Co. v. Feigo, 74 Mass. App. Ct. 1122, 909 N.E.2d 61 (2009).
As to materiality of misrepresentations, generally, see § 61.

3 AA Acupuncture Service, P.C. v. Safeco Ins. Co. of America, 25 Misc. 3d 30, 887 N.Y.S.2d 739 (App. Term 2009).

4 State Farm Mut. Auto. Ins. Co. v. Porter, 186 F.2d 834, 52 A.L.R.2d 499 (9th Cir. 1950).

5 Fireman's Fund Ins. Co. of San Francisco v. McConnell, 198 F.2d 401 (5th Cir. 1952).

6 Grain Dealers Mut. Ins. Co. v. Van Buskirk, 241 Md. 58, 215 A.2d 467 (1965).

7 Safe Auto Ins. Co. v. Farm Bur. Ins. Co., 867 N.E.2d 221 (Ind. Ct. App. 2007).